

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

Docket Nos. 18-2012, 18-2225, 18-2249, 18-2253, 18-2281,
18-2332, 18-2416, 18-2417, 18-2418, 18-2419, 18-2422,
18-2650, 18-2651, 18-2661, 18-2724, and 19-1385

In re National Football League Players' Concussion Injury Litigation

**JOINT APPENDIX
Volume IX of XIII, Pages JA5515-JA6279**

On appeal from Orders of the United States District Court for
the Eastern District of Pennsylvania (Hon. Anita B. Brody),
in No. 2:14-md-02323-AB and MDL No. 2323

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| Dkt. 7403, Order Granting Deandra Cobb’s Motion To Accept Objection to Five Percent Set-Aside File, filed Mar. 29, 2017 | JA7277 |
| Dkt. 7404, Plaintiffs’ Response Objection regarding: Co-Lead Class Counsel’s Petition for Five Percent Set-Aside, filed Mar. 29, 2017 | JA7278 |
| Dkt. 7409, Plaintiffs’ Motion for Extension of Time To File Answer, filed Mar. 29, 2017..... | JA7287 |
| Dkt. 7446, Order That Pursuant to Federal Rules of Civil Procedure 72b Referring All Petitions for Individual Attorney' Liens, filed Apr. 4, 2017 | JA7289 |
| Dkt. 7453, Order Granting Motion To Accept Joinder in Objections to Co-Lead Class Counsel’s Petition for Fees, filed Apr. 6, 2017 | JA7290 |
| Dkt. 7463, Response in Opposition regarding: Motion for Joinder, filed Apr. 10, 2017 | JA7291 |
| Dkt. 7464, Co-Lead Class Counsel’s Memorandum in Support regarding: Fee Petition, filed Apr. 10, 2017 | JA7308 |
| Dkt. 7464-1, Supplemental Seeger Declaration, filed Apr. 10, 2017 | JA7385 |
| Dkt. 7464-2, Exhibit Z, Declaration of Bradford R. Sohn | JA7396 |
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| Dkt. 7464-11, Exhibit II, U.S. Supreme Court Docket for <i>Armstrong v. NFL</i> | JA7630 |
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| Dkt. 7534, Aldridge Objectors’ Motion for Leave To Serve Fee- Petition Discovery, filed Apr. 21, 2017 | JA7750 |
| Dkt. 7550, Faneca Objectors’ Reply to Response to Motion for Attorney Fees, filed Apr. 25, 2017 | JA7756 |
| Dkt 7550-1, Expert Declaration of Joseph J. Floyd, filed Apr. 25, 2017 | JA7776 |
| Dkt. 7555, Reply in Support regarding: Jones Objectors’ Fee Petition, filed Apr. 26, 2017 | JA7785 |
| Dkt. 7605, Co-Lead Class Counsel’s Motion To Strike Aldridge Objectors’ Objections as Unauthorized Sur-Reply, filed May 5, 2017..... | JA7790 |
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| Dkt. 7608, Armstrong Objectors’ Reply regarding: Their Attorneys’ Fee Petition, filed May 5, 2017..... | JA7820 |
| Dkt. 7621, Mitnick Law Office’s Brief and Statement of Issues in Support of Request for Review of Objectors’ Fee Petition, filed May 9, 2017 | JA7828 |
| Dkt. 7626, Aldridge Objectors’ Response in Opposition regarding: Co-Lead Class Counsel’s Motion To Strike Aldridge Objectors’ Objections as Unauthorized Sur-Reply, filed May 12, 2017..... | JA7844 |

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| Dkt. 7627, Aldridge Objectors’ Memorandum of Law regarding: Co-Lead Class Counsel’s Motion To Strike Aldridge Objectors’ Objections as Unauthorized Sur-Reply, filed May 12, 2017 | JA7847 |
| Dkt. 7708, Faneca Objectors’ Reply to Response to Motion regarding: Faneca Objectors’ Motion for Attorney Fees and Mitnick Law Office’s Brief and Statement of Issues, filed May 18, 2017 | JA7856 |
| Dkt. 7710, Co-Lead Class Counsel’s Reply to Response to Motion regarding: Co-Lead Class Counsel’s Motion To Strike Aldridge Objectors’ Objections as Unauthorized Sur-Reply, filed May 19, 2017 | JA7863 |
| Dkt. 8310, Order To Show Cause regarding: Fees and Expenses, filed Aug. 23, 2017 | JA7872 |
| Dkt. 8327, Co-Class Counsel’s Response to Order To Show Cause and Request for Clarification and Extension of Time, filed Aug. 28, 2017 | JA7891 |
| Dkt. 8330, Notice by Plaintiff(s) regarding: Co-Lead Class Counsel’s Fee Petition, filed Aug. 29, 2017 | JA7895 |
| Dkt. 8350, Aldridge Objectors’ Response regarding: Aug. 23, 2017 Order, filed Aug. 31, 2017 | JA7898 |
| Dkt. 8354, Co-Lead Class Counsel’s Response in Opposition regarding: Notice by Plaintiff(s) For Appointment of Magistrate, filed Sept. 5, 2017 | JA7909 |
| Dkt. 8358, Order regarding: the Court’s Continuing and Exclusive Jurisdiction under Article XXVII of the Amended Class Action Settlement, filed Sept. 7, 2017 | JA7913 |
| Dkt. 8364, Reply to Co-Lead Class Counsel’s Response to Request To Appoint Magistrate Judge, filed Sept. 11, 2017 | JA7916 |
| Dkt. 8367, Order Directing the Filing of Declarations regarding: Proposed Fee Allocation, filed Sept. 12, 2017 | JA7920 |
| Dkt. 8372, Notice regarding: Professor William B. Rubenstein’s Appointment as Advisor to Plaintiff’s Steering Committee, filed Sept. 13, 2017 | JA7921 |

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| Dkt. 8376, Order Appointing Professor Rubenstein as an Expert Witness on Attorneys’ Fees, filed Sept. 14, 2017..... | JA7923 |
| Dkt. 8395, Aldridge Objectors’ First Supplement in Support of Objections, filed Sept. 20, 2017..... | JA7926 |
| Dkt. 8396, Aldridge Objectors’ Motion To Compel Compliance with Case Management Order No. 5, filed Sept. 20, 2017 | JA7931 |
| Dkt. 8440, Co-Lead Class Counsel’s Response in Opposition regarding: Aldridge Objectors’ Motion To Compel, filed Oct. 4, 2017..... | JA7933 |
| Dkt. 8447, Seeger Declaration regarding: Proposed Fee Allocation Order, filed Oct. 10, 2017 | JA7943 |
| Dkt. 8447-1, Exhibit to Declaration of Christopher A. Seeger in Support of Proposed Allocation | JA7965 |
| Dkt. 8447-2, Declaration of Brian T. Fitzpatrick | JA7967 |
| Dkt. 8448, Order Directing Filing of Counter-Declarations regarding: Attorneys’ Fees, filed Oct. 12, 2017 | JA7980 |
| Dkt. 8449, Aldridge Objectors’ Reply to Co-Lead Class Counsel’s Response to Their Motion To Compel Compliance with Case Management Order No. 5, filed Oct. 12, 2017 | JA7981 |
| Dkt. 8470, Co-Lead Class Counsel’s Motion for Order Directing the Claims Administrator To Withhold Any Portions of Class Member Monetary Awards, filed Oct. 23, 2017 | JA7987 |
| Dkt. 8532, Armstrong Objectors’ Response to Class Counsel’s Proposed Allocation of Common Benefit Attorneys’ Fees, filed Oct. 25, 2017..... | JA7992 |
| Dkt. 8556, Counter-Declaration of Jason E. Luckasevic regarding: Fee Allocation, filed Oct. 26, 2017..... | JA7996 |
| Dkt. 8653, Declaration of Craig R. Mitnick regarding: Fee Allocation, filed Oct. 27, 2017..... | JA8005 |

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| Dkt. 8701, Co-Lead Class Counsel Anapol Weiss’s Proposed Alternative Methodology for Fee Allocation, filed Oct. 27, 2017 | JA8020 |
| Dkt. 8709, Declaration of Gene Locks, Class Counsel, regarding: Fee Allocation, filed Oct. 27, 2017..... | JA8051 |
| Dkt. 8719, Counter- Declaration of Thomas V. Girardi regarding: Fee Allocation, filed Oct. 27, 2017..... | JA8086 |
| Dkt. 8720, Declaration of Anthony Tarricone in Opposition regarding: Fee Allocation, filed Oct. 27, 2017..... | JA8095 |
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| Dkt. 8720-2, Kreindler & Kreindler LLP Opposition to Co-Lead Counsel’s Petition for an Award of Common Benefit Attorneys’ Fees | JA8109 |
| Dkt. 8721, Declaration of Michael L. McGlamry regarding: Fee Allocation, filed Oct. 27, 2017..... | JA8122 |
| Dkt. 8722, Declaration of Charles S. Zimmerman regarding: Fee Allocation, filed Oct. 27, 2017..... | JA8141 |
| Dkt. 8723, Response by Neurocognitive Football Lawyers and The Yerid Law Firm In Support of Seeger Declaration regarding: Fee Allocation, filed Oct. 27, 2017..... | JA8158 |
| Dkt. 8724, Declaration of Derriel C. McCorvey regarding: Fee Allocation, filed Oct. 27, 2017..... | JA8167 |
| Dkt. 8725, Declaration of Lance H. Lubel regarding: Fee Allocation, filed Oct. 27, 2017..... | JA8179 |
| Dkt. 8726, Faneca Objectors’ Response in Opposition to Seeger Declaration regarding: Fee Allocation, filed Oct. 27, 2017 | JA8192 |
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| Dkt. 8728, Declaration of Steven C. Marks regarding: Fee Allocation, filed Oct. 27, 2017..... | JA8212 |

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| Dkt. 8900, Order Directing Filing of Omnibus Replies regarding: Counter-Declarations, filed Nov. 7, 2017 | JA8215 |
| Dkt. 8915, Notice by Class Counsel regarding: Settlement Implementation, filed Nov. 10, 2017 | JA8216 |
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| Dkt. 8929, Order regarding: Extension for Omnibus Reply, filed Nov. 17, 2017 | JA8219 |
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| Dkt. 8934-1, Supplemental Declaration of Brian T. Fitzpatrick, filed Nov. 17, 2017 | JA8267 |
| Dkt. 8937, Plaintiffs’ Motion for Leave To File Sur-Reply Counter- Declaration of Jason E. Luckasevic regarding: Fee Allocation, filed Nov. 21, 2017 | JA8270 |
| Dkt. 8945, Zimmerman Reed LLP’s Motion for Leave To File a Sur- Reply Declaration regarding: Fee Allocation, filed Nov. 22, 2017 | JA8274 |
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| Dkt. 9508, Order Denying Motions for Leave To File Sur-Reply Declaration, filed Dec. 5, 2017 | JA8279 |
| Dkt. 9510, Order Denying the Aldridge Objectors’ Motion To Compel Compliance with Case Management Order No. 5, filed Dec. 5, 2017 | JA8280 |
| Dkt. 9526, Export Report of Professor William B. Rubenstein, filed Dec. 11, 2017 | JA8281 |
| Dkt. 9527, Receipt of Expert’s Report and Notice regarding: Rubenstein Report Responses, filed Dec. 11, 2017 | JA8376 |

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| Dkt. 9536, Aldridge Objectors’ Motion for Reconsideration regarding: Extension of Time for Rubenstein Report Responses Notice, filed Dec. 19, 2017 | JA8378 |
| Dkt. 9545, Response by the Locks Law Firm to Rubenstein Report, filed Jan. 2, 2018 | JA8381 |
| Dkt. 9547, Response by Goldberg, Persky and White, P.C.; Girardi Keese; and Russomanno & Borrello to Rubenstein Report, filed Jan. 3, 2018 | JA8392 |
| Dkt. 9548, Response by Anapol Weiss to Rubenstein Report, filed Jan. 3, 2018 | JA8399 |
| Dkt. 9549, Response by the Mokaram Law Firm; The Buckley Law Group; and The Stern Law Group to Rubenstein Report, filed Jan. 3, 2018 | JA8402 |
| Dkt. 9550, Response and Declaration of Robert A. Stein to Rubenstein Report, filed Jan. 3, 2018 | JA8415 |
| Dkt. 9551, Response by The Yerrid Law Firm and Neurocognitive Football Lawyers to Rubenstein Report, filed Jan. 3, 2018..... | JA8420 |
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| Dkt. 9552-1, Declaration of Christopher A. Seeger | JA8443 |
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| Dkt. 9554, Response by the Aldridge Objectors to Rubenstein Report, filed Jan. 3, 2018 | JA8457 |
| Dkt. 9555, Notice of Joinder by Robins Cloud, LLP regarding: Responses to Rubenstein Report, filed Jan. 3, 2018..... | JA8469 |
| Dkt. 9556, Response by Class Counsel Podhurst Orseck, P.A. to Rubenstein Report, filed Jan. 3, 2018 | JA8471 |

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| Dkt. 9561, Order regarding: Appointment of Dennis R. Suplee to Represent <i>pro se</i> Settlement Class Members Where There Has Been a Demonstrated Need for Legal Counsel, filed January 8, 2018. | JA8476 |
| Dkt. 9571, Reply of Professor William B. Rubenstein to Responses to Expert Report, filed Jan. 19, 2018 | JA8477 |
| Dkt. 9576, Order Permitting Sur-Reply Filings in Response to Professor Rubenstein’s Reply, filed Jan. 23, 2018 | JA8493 |
| Dkt. 9577, Mitnick Law Office’s First Motion To Compel, filed Jan 26, 2018 | JA8494 |
| Dkt. 9581, Memorandum of Law regarding: Sur-Reply of NFL, Inc., and NFL Properties LLC to Rubenstein’s Reply to Responses, filed Jan. 30, 2018 | JA8498 |
| Dkt. 9587, Notice by Plaintiff(s) regarding: Sur-Reply of X1Law to Rubenstein’s Reply to Responses, filed Jan. 30, 2018 | JA8500 |
| Dkt. 9588, Notice by Plaintiff(s) regarding: Aldridge Objectors’ Sur-Reply to Rubenstein’s Reply to Responses, filed Jan. 30, 2018 | JA8506 |
| Dkt. 9753-1, Exhibit A, Curriculum Vitae of Brian R. Ott, M.D. | JA8513 |
| Dkt. 9753-2, Exhibit B, Curriculum Vitae of Mary Ellen Quiceno, M.D., F.A.A.N. | JA8564 |
| Dkt. 9757, Order regarding: Joint Application by Co-Lead Class Counsel and Counsel for the NFL and NFL Properties, LLC for Appointment of Two Appeals Advisory Panel Members and Removal of One Appeals Advisory Panel Member, filed Mar. 6, 2018..... | JA8577 |
| Dkt. 9760, Order Adopting Rules Governing Attorney's Liens, filed Mar. 6, 2018 | JA8581 |
| Dkt. 9786, Class Counsel’s Motion To Appoint the Locks Law Firm as Administrative Class Counsel, filed Mar. 20, 2018 | JA8603 |
| Dkt. 9813, Pope McGlamry P.C.’s Motion for Joinder regarding: Administrative Class Counsel, filed Mar. 26, 2018..... | JA8628 |

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| Dkt. 9816, Motion for Joinder by Locks Law Firm regarding: Hearing To Correct Fundamental Implementation Failures in Claims Processing, filed Mar. 26, 2018 | JA8632 |
| Dkt. 9819, Motion for Joinder by Provost Umphrey Law Firm, LLP regarding: Administrative Class Counsel, filed Mar. 27, 2018 | JA8635 |
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| Dkt. 9838, Notice by the Locks Law Firm In Response to Request for Deadline for Joinders and Date of Response Motion, filed Mar. 29, 2018..... | JA8690 |
| Dkt. 9839, Motion for Joinder by Anapol Weiss regarding: Hearing Request on Claims Settlement Process, filed Mar. 29, 2018..... | JA8691 |
| Dkt. 9840, Notice by the Locks Law Firm in Response to Request for Deadline for Joinders and Date of Response to Motion, filed Mar. 30, 2018..... | JA8694 |
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| Dkt. 9843, Motion for Joinder by the Yerrid Law Firm and Neurocognitive Football Lawyers, filed Mar. 30, 2018 | JA8700 |
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| Dkt. 9847, Notice by Robins Cloud LLP of Withdrawal of Joinder regarding: Administrative Class Counsel, filed Apr. 2, 2018 | JA8722 |
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| Dkt. 9852, Co-Lead Class Counsel’s Response to Motion for Joinder Seeking Court Intervention, filed Apr. 3, 2018 | JA8733 |
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| Dkt. 9854, Motion for Joinder by Smith Stallworth PA regarding: Administrative Class Counsel, filed Apr. 3, 2018 | JA8741 |

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| Dkt. 9855, Motion for Joinder by Berkowitz and Hanna LLC regarding: Administrative Class Counsel and For a Hearing, filed Apr. 3, 2018 | JA8743 |
| Dkt. 9856, Motion for Joinder by Aldridge Objectors’ regarding: Administrative Class Counsel, filed Apr. 3, 2018 | JA8750 |
| Dkt. 9856-1, Memorandum in Support of Movants’ Joinder in the Motion of Class Counsel, the Locks Law Firm, for Appointment of Administrative Class Counsel..... | JA8752 |
| Dkt. 9856-2, Exhibit A, Email correspondence dated Sept. 20, 2018 | JA8761 |
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| Dkt. 9856-4, Exhibit C, Email correspondence dated Feb. 19, 2018 | JA8764 |
| Dkt. 9860, Memorandum of Hon. Anita Brody Granting Co-lead Counsel’s Petition for Award of Attorneys’ Fees and Reimbursement of Expenses, filed Apr. 5, 2018..... | JA8766 |
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| Dkt. 9874, Co-Lead Class Counsel’s Notice regarding: Class Counsel’s Attorneys’ Fee Award, filed Apr. 11, 2018 | JA8837 |
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| Dkt. 9890, Order Denying the Motion of Class Counsel Locks Law Firm for Appointment of Administrative Class Counsel, filed Apr. 18, 2018 | JA8884 |

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| Dkt. 9920, Tarricone Declaration regarding: Mar. 28, 2018 Order, filed May 1, 2018 | JA8886 |
| Dkt. 9921, Locks Law Firm’s Motion for Reconsideration of the Denial of the Locks Law Firm’s Motion for Appointment of Administrative Class Counsel, filed May 1, 2018 | JA8891 |
| Dkt. 9926, Aldridge Objectors’ Motion for New Trial, filed May 2, 2018 | JA8906 |
| Dkt. 9955, Order Directing Firms Seeking Attorneys’ Fees To File Materials, filed May 3, 2018 | JA8908 |
| Dkt. 9970, Amended Order for Hearing, filed May 7, 2018 | JA8910 |
| Dkt. 9985, Order Denying the Motion for Entry of Case Management Order Governing Applications for Attorneys’ Fees; Cost Reimbursements; and Further Fee Set-Aside, filed May 14, 2018 | JA8912 |
| Dkt. 9990, Declaration by Mitnick Law Office regarding: Independent Fee Petition, filed May 14, 2018 | JA8913 |
| Dkt. 9993, Co-Lead Class Counsel’s Response in Opposition regarding: Motion for Reconsideration of Administrative Class Counsel, filed May 15, 2018 | JA8916 |
| Dkt. 9995, Faneca Objectors’ Statement regarding: Improvements to Preliminarily-Approved Settlement, filed May 16, 2018 | JA8921 |
| Dkt. 9996, Co-Lead Class Counsel’s Response in Opposition regarding: Motion for New Trial, filed May 16, 2018 | JA8925 |
| Dkt. 10000, Co-Lead Class Counsel’s PowerPoint from May 15, 2018 Hearing, filed May 17, 2018 | JA8939 |
| Dkt. 10001, Anapol Weiss’s Motion for Leave To File Supplemental Memorandum regarding: Allocation of Common Benefit Fees, filed May 17, 2018 | JA8954 |
| Dkt. 10004, Order regarding: Hearing Concerning Attorneys’ Fees, filed May 21, 2018 | JA8961 |

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| Dkt. 10007, Order Denying Anapol Weiss’ Motion for Leave To File Supplemental Memorandum regarding: Allocation of Common Benefit Fees, filed May 21, 2018..... | JA8963 |
| Dkt. 10016, Letter Brief by the Locks Law Firm, filed May 22, 2018..... | JA8964 |
| Dkt. 10017, Co-Lead Class Counsel’s Response regarding: Locks Law Firm’s Letter Brief, filed May 23, 2018 | JA8968 |
| Dkt. 10019, Explanation and Order of Judge Brody re Allocation of Attorneys’ Fees, filed May 24, 2018 | JA8971 |
| Dkt. 10022, Aldridge Objectors’ Motion To Stay regarding: Attorneys’ Fees Allocation, filed May 25, 2018 | JA8998 |
| Dkt. 10023, Order Finding as Moot Motion To Strike Class Counsel’s Sur-Reply regarding: Fee Allocation, filed May 29, 2018 | JA9000 |
| Dkt. 10026, Co-Lead Class Counsel’s Response regarding: Mitnick Law Office’s Petition for Independent Award of Attorneys’ Fees, filed May 29, 2018 | JA9001 |
| Dkt. 10031, Co-Lead Class Counsel’s Response in Opposition regarding: Aldridge Objectors’ Motion To Stay, filed May 31, 2018..... | JA9004 |
| Dkt. 10039, Aldridge Objectors’ Reply to Response to Motion regarding: Motion To Stay, filed June 1, 2018 | JA9015 |
| Dkt. 10073, The Locks Law Firm’s Motion for Reconsideration of the Court’s Explanation and Order, filed June 7, 2018 | JA9025 |
| Dkt. 10085, Order Denying as Moot the Aldridge Objectors’ Motion To Reconsider Withdrawal of Fed. R. Evid. 706 Deposition, filed June 19, 2018 | JA9034 |
| Dkt. 10086, Order Denying as Moot the Motion Requesting the Court To Direct the Relevant Parties To Negotiate on the Allocations of the Common Benefit Fund, filed June 19, 2018..... | JA9035 |
| Dkt. 10091, Co-Lead Class Counsel’s Response in Opposition regarding: the Locks Law Firm’s Motion for Reconsideration, filed June 19, 2018 | JA9036 |

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| Dkt. 10096, Faneca Objectors’ Notice of Filing Hearing Slides, filed June 22, 2018 | JA9042 |
| Dkt. 10105, Certified Copy of Order from the USCA, filed June 28, 2018 | JA9048 |
| Dkt. 10119, Order Denying Motion for Reconsideration of the Denial of Locks Law Firm’s Motion for Appointment of Administrative Class Counsel, filed July 2, 2018..... | JA9049 |
| Dkt. 10127, Order Denying Motion for Reconsideration of the Court's Explanation and Order ECF Nos. 10072 and 10073, filed July 10, 2018 | JA9051 |
| Dkt. 10128, First Verified Petition of Co-Lead Class Counsel Christopher A. Seeger for an Award of Post-Effective Date Common Benefit Attorneys’ Fees and Costs, filed July 10, 2018 | JA9052 |
| Dkt. 10134, Transcript of May 15, 2018 Hearing, filed July 13, 2018..... | JA9073 |
| Dkt. 10145, Status Report of Co-Lead Class Counsel, filed July 18, 2018..... | JA9198 |
| Dkt. 10165, Aldridge Objectors’ Objections regarding: Post-Effective Date Fees, filed July 24, 2018..... | JA9205 |
| Dkt. 10165-1, Exhibit 1, Declaration of Christopher A. Seeger | JA9221 |
| Dkt. 10165-2, Exhibit 2, Letter from Craig R. Mitnick to Judge Brody dated Apr. 16, 2018 | JA9224 |
| Dkt. 10165-3, Text of Proposed Order | JA9229 |
| Dkt. 10188, Notice of Appeal of Locks Law Firm from the May 24, 2108 Explanation and Order ECF No. 10019, filed August 2, 2018..... | JA9230 |
| Dkt. 10261, Zimmerman Reed LLP’s Objection regarding: Post- Effective Date Fees, filed Sept. 18, 2018 | JA9233 |
| Dkt. 10278, Declaration of Christopher A. Seeger regarding: Post- Effective Date Fees, filed Sept. 27, 2018 | JA9242 |

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| Dkt. 10283, Order Adopting Amended Rules Governing Attorneys' Liens, filed Oct. 3, 2018 | JA9248 |
| Dkt. 10294, Order Adopting Amended Rules Governing Petitions for Deviation from the Fee Cap, filed Oct. 10, 2018..... | JA9272 |
| Dkt. 10368, Report and Recommendation of Magistrate Judge Strawbridge, filed January 7, 2109 .. | JA9290 |
| Dkt. 10374, Second Verified Petition of Co-Lead Class Counsel Seeger for Award of Post-Effective Date Common Benefit Attorneys Fees and Costs, filed January 10, 2109 | JA9383 |
| Dkt. 10624, Order regarding: Vacating appointments of all Class Counsel, Co-Lead Class Counsel, and Subclass Counsel and Reappointing Christopher A. Seeger as Class Counsel, filed May, 24, 2019 | JA9402 |
| Dkt. 10677, Report and Recommendation of Magistrate Strawbridge, filed June 20, 2109 | JA9404 |
| Dkt. 10756-1, David Buckley, PLLC, Mokaram Law Firm and Stern Law Group's Petition to Establish Attorney's Lien, filed July 18, 2019 | JA9425 |
| Dkt. 10767, Third Verified Petition of Class Counsel Seeger for Award of Post-Effective Date Common Benefit Attorneys Fees and Costs, filed July 25, 2109 | JA9428 |

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civil Action No. 2:14-cv-00029-AB

Plaintiffs,

v.

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**MOTION OF SEAN MOREY, ALAN FANECAL, BEN HAMILTON,
ROBERT ROYAL, RODERICK CARTWRIGHT, JEFF ROHRER,
AND SEAN CONSIDINE FOR AN ORDER REQUIRING DISCLOSURE OF
PAYMENTS TO, AND FINANCIAL RELATIONSHIPS WITH, EXPERTS**

Sean Morey, Alan Faneca, Ben Hamilton, Robert Royal, Roderick Cartwright, Jeff Rohrer, and Sean Considine (collectively, "Movants") respectfully move to seek disclosure of any compensation Class Counsel and the NFL paid to their experts or their experts' employees for their assistance and/or preparation of materials relating to the November 19, 2014 fairness hearing and any subsequent briefing.

1. In support of their Motion for an Order Granting Final Approval of Settlement and Certification of Class and Subclasses, and Memorandum of Law in Support of Final Approval of the Class Action Settlement Agreement and in Response to Objections, Class

Counsel and the NFL submitted eleven expert declarations, including eight medical expert declarations, many of which purported to address the link between CTE and brain trauma.¹ At the fairness hearing, both the NFL and Class Counsel emphasized that the Settlement should be rejected or approved based on current science – including whether there is a link between brain trauma and playing in the NFL. *See, e.g.*, Fairness Hearing Tr. 33 (Class Counsel noting that this is “a science-driven case”); *id.* at 188 (counsel for the NFL relying on “the current state of scientific knowledge”).

2. Objectors submitted two expert declarations before the fairness hearing and eleven more after the fairness hearing, all demonstrating that, among other things, playing in the NFL is a cause of CTE.² Objectors voluntarily disclosed that they did not pay their experts **anything**. *See, e.g.*, Dkt. No. 6455, at 5-7. The NFL and Class Counsel, by contrast, have remained silent – even after being directly challenged on this very point – as to what compensation their experts received in exchange for their services. Fairness Hearing Tr. 73-74; Dkt. No. 6455, at 11.

3. Class Counsel also submitted a declaration from a law professor – who conceded the Settlement was flawed in its treatment of time spent playing in NFL Europe, *see* Klonoff

¹ The NFL Parties submitted three medical expert declarations in support of their motion for final approval of the Settlement Agreement. *See* Millis Decl. (Dkt. No. 6422-34); Schneider Decl. (Dkt. No. 6422-35); Yaffe Decl. (Dkt. No. 6422-36). Class Counsel submitted five medical expert declarations in support of their position. *See* Fischer Decl. (Dkt. No. 6423-17); Giza Decl. (Dkt. No. 6423-18); Hovda Decl. (Dkt. No. 6423-19); Keilp Decl. (Dkt. No. 6423-20); Hamilton Decl. (Dkt. No. 6423-25). Class Counsel also submitted three additional non-medical expert affidavits. *See* Klonoff Decl. (Dkt. No. 6423-9); Kinsella Decl. (Dkt. No. 6423-12); Vasquez Decl. (Dkt. No. 6423-21).

² *See* Stern Decl. (Dkt. No. 6201-16); Gandy Decl. (Dkt. No. 6232-1); Stern Supp. Decl. (Dkt. No. 6455-1); Gandy Supp. Decl. (Dkt. No. 6455-2); Hof Decl. (Dkt. No. 6455-3); Zhang Decl. (Dkt. No. 6455-4); Shenton Decl. (Dkt. No. 6455-5); Bernick Decl. (Dkt. No. 6455-6); Weiner Decl. (Dkt. No. 6455-7); Stone Decl. (Dkt. No. 6455-8); Wisniewski Decl. (Dkt. No. 6455-9); DeKosky Decl. (Dkt. No. 6455-10); Gordon Decl. (Dkt. No. 6455-11).

Decl. ¶ 16 (“[T]he parties should consider modifications to the settlement agreement to address the NFL Europe issue.”) (Dkt. No. 6423-9) – as well as a declaration from the president of an advertising and legal notification firm who addressed implementation of the Settlement’s Notice Program, *see* Kinsella Decl. (Dkt. No. 6423-12), and a declaration from a management consultant who assessed the Settlement’s Monetary Award Matrix, *see* Vasquez Decl. (Dkt. No. 6423-21).

4. To promote transparency in a settlement that has been a black box to all but the select few who directly participated in its negotiation, this Court should require disclosure of payments made by the NFL and/or Class Counsel to experts who have submitted declarations in support of the Settlement.³

5. The law recognizes the importance of disclosing expert compensation to assess bias and credibility. For example, Rules 26(a)(2)(B)(v) and 26(a)(2)(B)(vi) require that an expert who is “retained or specially employed to provide expert testimony in [a] case” provide “a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition,” Fed. R. Civ. P. 26(a)(2)(B)(v), as well as “a statement of the compensation to be paid for [his or her] study and testimony in the case,” Fed. R. Civ. P. 26(a)(2)(B)(vi). Similarly, Rule 26(b)(4)(C)(i) makes communications between an expert and an attorney regarding “compensation for the expert’s study or testimony” in a case discoverable. Fed. R. Civ. P. 26(b)(4)(C)(i). That discovery “is not limited to compensation for work forming the opinions to be expressed, but extends to all compensation for the study and testimony

³ *See, e.g., Rector Church Wardens v. Hussman Corp.*, No. 91-7310, 1993 WL 29147 (E.D. Pa. Feb. 4, 1993) (directing plaintiff to respond to interrogatories seeking discovery of expert compensation to examine bias or impartiality); *Behler v. Hanlon*, 199 F.R.D. 553 (D. Md. 2001) (ordering defense expert in personal injury case to produce percentage of gross income earned for each of the preceding five years that related to expert witness services provided on behalf of insurance companies or attorneys defending personal injury cases to assess bias or prejudice).

provided in relation to the action,” including “work done by a person or organization associated with the expert.” Fed. R. Civ. P. 26 (2010 amendment note).

6. The purpose of disclosing expert compensation “is to permit full inquiry into . . . potential sources of bias.” *Id.*; see also *Cary Oil Co. v. MG Ref. & Mktg., Inc.*, 257 F. Supp. 2d 751, 756-57 (S.D.N.Y. 2003) (describing Rule 26’s requirement of expert compensation disclosure as going beyond mere billing rates to also encompass a witness’s possible bias or improper interest in a litigation). Concerns over bias, partiality, or other improper interests are thus grounds supporting disclosure of expert compensation.⁴

7. In this case, the NFL and Class Counsel should be required to disclose what compensation their experts or experts’ employees received in exchange for their support of a settlement rife with problems.

8. Class Counsel’s apparent hesitancy to disclose what compensation its experts or experts’ employees may have received in exchange for their support is disconcerting. Class Counsel “owe[s] ***the entire class***” – not simply a select portion of class members – a fiduciary duty to act in its best interests and establish a settlement that is fair, adequate, and reasonable. *Greenfield v. Villager Indus., Inc.*, 483 F.2d 824, 832 (3d Cir. 1973) (emphasis added); *In re Cendant Corp. Litig.*, 264 F.3d 201, 231 (3d Cir. 2001) (similar). If the Settlement truly is fair,

⁴ See, e.g., *United States v. 412.93 Acres of Land*, 455 F.2d 1242, 1247 (3d Cir. 1972) (affirming trial court’s granting disclosure of an expert witness’s per diem fee to show possible bias); *Hunt v. McNeil Consumer Healthcare*, No. 11-0457, 2012 WL 234264, at *4 (E.D. La. June 20, 2012) (ordering production of records showing compensation paid to expert in other litigations involving similar claims following defendants’ argument that such records “may give light to a lack of impartiality and/or bias”); *Thayer v. Liggett & Myers Tobacco Co.*, 13 Fed. R. Serv. 2d 976 (W.D. Mich. 1970) (stating “compensation, in whatever form, received by defendants’ experts . . . was relevant to the credibility of their testimony” as such compensation may “dilute the[ir] persuasiveness”).

adequate, and reasonable for all class members, the NFL and Class Counsel should have no reason to oppose disclosing expert compensation.

WHEREFORE, for the reasons set forth herein, Movants respectfully request that the Court require Class Counsel and the NFL to disclose: (i) any direct or indirect financial payments or donations made to their experts, their experts' employees or associates, or organizations with which their experts are affiliated, which were made since January 1, 2009; and (ii) any agreements, formal or informal, to make direct or indirect payments or donations to their experts, their experts' employees or associates, or organizations with which their experts are affiliated, at any time in the future.

Dated: December 9, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2014, I caused the foregoing Motion to Seek Disclosure of Payments to Experts to be filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, which will provide electronic notice to all counsel and parties.

/s/ Steven F. Molo

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE NATIONAL FOOTBALL) No. 2:12-md-02323-AB
LEAGUE PLAYERS' CONCUSSION)
INJURY LITIGATION) MDL No. 2323

THIS DOCUMENT RELATES TO) Philadelphia, PA
November 19, 2014
9:58 a.m.-3:20 p.m.
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FAIRNESS HEARING/AMENDED TRANSCRIPT
BEFORE THE HONORABLE ANITA B. BRODY

APPEARANCES :

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P R O C E E D I N G S

(Call to Court)

THE CLERK: Now in session. The
Honorable Anita B. Brody presiding. Good morning,
Your Honor.

THE COURT: Good morning.

(A chorus of good morning)

THE COURT: Won't you be seated.

We're here in the case of NFL Players
Concussion Litigation, multi-district litigation
number 12-23-23.

And there are a few things that I want
to take care of before we -- before we begin. I want
to introduce Mr. Perry Golkin. Why don't you stand,
Mr. Golkin, who is my special master for financial
matters, and he has been just invaluable, and I want
to publicly thank you, Perry, you're been wonderful.

And if I decide to approve this
settlement and grant the motion I want to introduce
two people that I have designated for -- thank you --
two people that I have -- will be designating for
special master's implementation of the agreement.

And first, Dean Wendell Prichett, why
don't you stand -- Dean Prichett who is the -- are
you the interim dean, isn't that correct, at the

1 University of Pennsylvania Law School, and he's a
2 professor of law. Thank you.

3 And also Jo-Ann Verrier who will cover
4 the administrative matters. Jo -- full disclosure.
5 Jo-Ann was a law clerk of mine 30 years ago and she is
6 now vice dean of -- for administration at the
7 University of Pennsylvania law School. Thank you.

8 And Judge Strawbridge who is my
9 magistrate judge. And any time the agreement says
10 that it will be -- the Court will adjudicate the
11 matter it may be me or it may be Judge Strawbridge.
12 Thank you, David, I appreciate that.

13 Okay. Let's begin. Mr. Seeger.

14 MR. SEEGER: Yes, Your Honor.

15 Your Honor, if you don't mind I'm going
16 use this podium for a few minutes and then switch over
17 to this one.

18 THE COURT: Oh, wow. Okay. I'm glad I
19 have four of those podiums.

20 MR. SEEGER: I don't want to mess up --
21 I don't want to mess up the technology here.

22 THE COURT: All right. Okay.

23 MR. SEEGER: Good morning, Your Honor.

24 THE COURT: Good morning, Mr. Seeger.

25 MR. SEEGER: Thank you for this

1 opportunity.

2 I'd like to start by just introducing
3 if you don't mind, Your Honor, a few people that are
4 in the courtroom.

5 THE COURT: Oh, certainly.

6 MR. SEEGER: Chea (ph) Smith is with
7 us. She's the wife of Steve Smith, retired NFL
8 player, who's too sick to be here today, he's
9 suffering from ALS.

10 THE COURT: Okay.

11 MR. SEEGER: Also with us is our class
12 representative --

13 THE COURT: You know I think that the
14 -- if you use the microphone everybody can hear a
15 little -- yeah, that's better.

16 MR. SEEGER: I'll do that.

17 THE COURT: Yeah.

18 MR. SEEGER: Thank you, Mrs. Smith.

19 Also with us is Shawn Wooden, who's our
20 subclass representative, retired NFL player as well,
21 for Subclass I.

22 Our subclass representative, Kevin
23 Turner, for Subclass II could not make it. His
24 condition has deteriorated to the point where he is
25 now on a breathing -- he needs assistance with his

1 breathing and he's got a feeding tube, so his medical
2 professionals didn't think it would be appropriate for
3 him to travel, but he did want to be here and he
4 wanted me to mention that.

5 THE COURT: Okay.

6 MR. SEEGER: So thank you, Your Honor.

7 Also with me is our counsel I should
8 note. Co-lead counsel, Saul Weiss is here, Your
9 Honor.

10 MR. WEISS: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. SEEGER: Also some members of the
13 negotiating team in the PEC, Gene Locks (ph) is here.

14 THE COURT: Hi.

15 MR. SEEGER: Steve Marks (ph). And
16 subclass counsel Arnold Levin (ph) and Diane Nest
17 (ph).

18 MR. MARKS: Good morning, Your Honor.

19 THE COURT: Good morning.

20 MR. SEEGER: And, Judge, before I start
21 I would like to just spend a moment to thank Your
22 Honor for everything you've done in this case. The
23 way you've handled it, the way you've managed it, and
24 at times the parties, as you know, this was a tough
25 fought litigation as well as a negotiation, and we

1 needed a kick in the pants at times and we got that
2 from Your Honor, and I want to thank you.

3 THE COURT: I never -- I never withhold
4 that.

5 (Laughter)

6 MR. SEEGER: And at times when it got
7 difficult we came to Your Honor and we asked for help.
8 And one of the things we asked you for is to appoint
9 Judge Lane Phillips to help us out, and you did that,
10 Your Honor, and he helped us get at least to the first
11 point that we got to.

12 And at that point Your Honor had some
13 questions about the deal and you needed those
14 responded to and studies, and you appointed Special
15 Master Golkin. And I want to thank Special Master
16 Golkin as well for the work he did in this case and
17 Your Honor for appointing him.

18 Judge, we're here today seeking final
19 approval of this landmark and historic settlement. I
20 say landmark because this settlement uses state of the
21 art diagnostic tools and tests that will assist in the
22 diagnosis, treatment, and prevention of diseases
23 associated with mild traumatic brain injury,
24 concussions, and sub-concussive hits.

25 There are numerous studies that

1 indicate the importance of early detection and
2 treatment and prevention in staving off some of the
3 serious conditions from a degenerative brain disease
4 like -- that are dealt with in this litigation, not to
5 mention the fact that the information that'll be
6 generated through our baseline assessment program will
7 be very important for science and scientists and
8 doctors who study this disease and try to come up with
9 answers to some of the things we don't -- answers that
10 we don't have today.

11 I also refer to this settlement as
12 historic because 5,000 brave NFL players put their
13 name and reputations on the line and took on the NFL
14 in what everyone understood would be a long and hard
15 fought battle. Those men, their wives, and their
16 families made this happen. They achieved something
17 that no one two years ago thought was possible could
18 be achieved, something that no one before was able to
19 achieve. They want an outstanding results for all NFL
20 retired NFL players whether they are vested union
21 members or not.

22 The settlement I'm about to discuss
23 gets immediate help to retired NFL players like Kevin
24 Turner suffering from a debilitating disease like ALS,
25 it helps those with Alzheimer, dementia, and

1 Parkinson's. No retired NFL player needs to prove he
2 sustained a concussion or prove causation in this
3 settlement. He only need be a retired NFL player.

4 All retired NFL players will have the
5 ability to get tested by a competent medical
6 professional located where they live.

7 Before I go into the details about the
8 benefits provided in the settlement I'd like to set
9 the stage for the settlement discussions.

10 This groundbreaking resolution is the
11 result of many months of intense, hard fought, arms
12 length negotiations. I have extensive experience in
13 trying individual cases, mass cases, class cases
14 involving personal injuries. I've personally
15 negotiated over \$8 billion in settlements for victims
16 suffering from personal injuries in pharmaceutical
17 cases and all kinds of different cases.

18 In a case like this it's class
19 counsel's duty to negotiate -- to consider the class
20 as a whole when negotiating a global resolution and to
21 achieve the best results under the circumstances in
22 the particular case.

23 Although we were prepared to litigate
24 each and every one of these cases to trial, and in
25 fact we were in the middle of litigating preemption

1 when we settled this case, that issue alone could have
2 dismissed thousands of cases in this litigation.

3 Co-lead counsel decided that the class
4 as a whole be best served by a global resolution if
5 one could be achieved on the right terms.

6 At the urging of Your Honor the parties
7 began a series of meetings to explore settlement.
8 Coming into these negotiations we were prepared to
9 make demands on all categories of injuries. In our
10 complaint we allege that concussions and sub-
11 concussive hits result in Alzheimer, ALS, dementia,
12 Parkinson's, anger, mood swings, depression, sleep
13 loss, we had a whole number of injuries.

14 In the end, based upon the back and
15 forth of these hard fought negotiations, the
16 scientific considerations, and the legal issues
17 foreseeable in the case, the parties agreed to the
18 settlement terms we now present to this Court today
19 for approval.

20 The question for Your Honor today is
21 not whether the settlement is perfect, but whether
22 it's fair, reasonable, and adequate, and under the
23 circumstances of this case and the controlling Third
24 Circuit law this settlement is entitled to a
25 presumption of fairness.

1 So, Judge, now I'd like to go through
2 the settlement and some of the issues in the case for
3 class certification.

4 Your Honor, I just want to -- do you
5 see my PowerPoint up on your screen?

6 THE CLERK: He has to touch the feed.

7 MR. SEEGER: What's that?

8 THE CLERK: He has to tap your feed.

9 MR. SEEGER: Tap the feed. Whatever
10 that means.

11 THE COURT: Do you want to help him?

12 (Pause)

13 MR. SEEGER: All right.

14 THE COURT: I don't have it, Jim.

15 Thank you. All right, I can see it now.

16 MR. SEEGER: All right.

17 THE COURT: There's no problem now.

18 Can everybody see it?

19 MR. SEEGER: And you know what, Your
20 Honor, maybe -- I also have a hard copy if you want to
21 follow along that way.

22 THE COURT: Perfect.

23 MR. SEEGER: So I'll hand you two. One
24 for Jack as well.

25 THE COURT: Okay, that's fine.

1 MR. SEEGER: Okay.

2 THE COURT: And I don't -- can
3 everybody see -- can you see it, Ms. --

4 UNIDENTIFIED SPEAKER: (Indiscernible -
5 10:08:26).

6 THE COURT: Okay. That's fine. Okay.

7 MR. SEEGER: Your Honor, there are
8 three components to the settlement. There's a
9 baseline assessment program, monetary award fund, and
10 an educational fund.

11 Let's talk about the baseline
12 assessment. I'll try to get through some of this
13 quickly because I know I have a limited amount of
14 time.

15 It's a -- there is \$75 million
16 committed to the baseline assessment program. It
17 includes neurological examinations and comprehensive
18 neuropsychological tests for all NFL players that want
19 to avail themselves of it. We're hoping all of them
20 do.

21 The BAP (ph) administrator will select
22 an independent group of medical professionals who will
23 handle these tests, and all you need to be able to go
24 through the baseline assessment program is a half a
25 season -- a half eligible season in the settlement,

1 and if the players are age 43 or older they have two
2 years to be tested, and if they're younger than 43
3 they have up to 10 years to be tested.

4 And again, I mentioned that we don't
5 have to spend a lot of time on this, the importance --
6 it is throughout the medical literature the importance
7 of diagnosing these diseases early, getting the
8 treatment, and prevention. This is a very important
9 part of the program, Your Honor.

10 So what could be diagnosed through the
11 BAP testing program? The levels of neurocognitive
12 disease that we've identified. Level 2, which is
13 moderate dementia. Level 1.5, which is what we call
14 early or mild dementia, Your Honor.

15 THE COURT: Is that the same? Because
16 sometimes it's called earlier and sometimes it's
17 called mild.

18 MR. SEEGER: It's referred to both in
19 the literature, Your Honor. And I think for the
20 purpose --

21 THE COURT: And so that --

22 MR. SEEGER: Yes.

23 THE COURT: Do you agree with that?

24 MR. KARP: We do, Your Honor.

25 THE COURT: Okay. All right.

1 MR. SEEGER: Thank you for pointing
2 that out, Your Honor.

3 And then we provide supplemental
4 benefits. So if somebody doesn't rise to the level of
5 a qualifying condition, Your Honor, but they're
6 diagnosed with impairment not rising to the level of
7 qualifying condition we will get them that important
8 additional testing medical treatment and
9 pharmaceutical care, if necessary.

10 The monetary award fund critically and
11 very important to this is uncapped. Every qualifying
12 diagnosis over the 65-year life of this settlement
13 will be paid. That is guaranteed now by the NFL. The
14 qualifying diagnoses are ALS, Parkinson's, Alzheimer,
15 Level 2, which is moderate dementia, Level 1.5, which
16 is earlier mild dementia, and that's with CTE for
17 players who passed away prior to July 7th, 2014 and
18 has a pathological finding of CTE on the brain.

19 Again, the highlights, no player need
20 establish causation as they would have to do if this
21 were being -- this were a case tried before a jury.

22 And the diagnoses are all going to be
23 made by qualified professionals, and the diagnosis
24 will be set at the date that the diagnosis is made by
25 a medical professional for the purposes of

compensation.

There are adjustments in the payment scheme that deal with the number of years played in the NFL, the age of the player at the time of diagnosis, and I'll talk about those later in my presentation, and there are adjustments for players who suffered a stroke prior to certain conditions and brain trauma not related to football play.

And here's just a -- how the seasons breakdown, the number of seasons needed to qualify for a full award.

Now, importantly in a player is diagnosed with Level 1.5 dementia let's say, Your Honor, which is early to mild, and they progress into Level 2, they will get a supplemental benefit. We will look at it again and they will be paid additional money that correlates with where they are on the grid for Level 2 dementia. If they advance into Alzheimer they could be -- they could be eligible for an additional compensation there. That's very important. They can reapply to the program throughout their life.

And one thing that we all encountered, those of us who talk to players all the time as we have throughout, is they may have a diagnosis which is just short of a qualifying diagnosis. Well they're

1 not out of the program, they can keep coming back if
2 these are degenerative diseases, and we don't wish
3 these on anybody, but God forbid a player digresses
4 and he gets sicker he can reapply for these awards,
5 and that can happen throughout his lifetime.

6 Statutory lien is a very important
7 aspect of this settlement are being dealt with by
8 plaintiffs' counsel, by class counsel. We're taking
9 the power and the size of this fund and we're going to
10 negotiate lien reductions for the players far beyond
11 anything an individual lawyer could do or the player
12 could do for themselves. These lien reductions will
13 be substantial, and it won't affect their eligibility
14 if they're getting Medicare or Medicaid. Their future
15 eligibility is preserved.

16 And finally in terms of additional
17 features is that we will allow modifications to the
18 settlement to incorporate new diagnostic tools, and
19 the parties are going to continually, even though the
20 agreement says every ten years, we're going to work
21 together all the time to keep an eye on this, and we
22 will in good faith make sure that if they're necessary
23 and needed they will be implemented.

24 THE COURT: So if it's good faith your
25 representation; is that correct?

1 MR. KARP: It is, Your Honor.

2 THE COURT: All right. That means that
3 there is -- there can be judicial oversight of that.

4 MR. SEEGER: Yes, Your Honor.

5 THE COURT: Do you agree with that,
6 Mr. Karp?

7 MR. KARP: We do. It's laid out in the
8 agreement. Yes.

9 THE COURT: Okay. Thank you.

10 MR. SEEGER: Thank you, Your Honor.

11 And finally the education fund, which
12 in terms of the dollar amount is a small aspect of
13 this, but it's important, because it's going to be
14 used to educate retired players regarding benefits
15 that are available to them that they may not be aware
16 of. We've had numerous discussions with players who
17 would qualify for benefits that are provided now by
18 the NFL that don't know they're there for whatever
19 reason, and we're going to make sure that they know
20 whatever benefits they are. Counseling, whatever it
21 is.

22 And we're going to try to establish
23 programs and work with programs to make football safer
24 so that players learn how to hit in a safer way to
25 avoid some of these injuries.

1 Also the agreement there are numerous
2 CBA benefits that have been collectively bargained
3 for. I just mentioned them.

4 What we learned while we were
5 negotiating is that in the 2011 collective bargaining
6 agreement there's a neurocog program -- a
7 neurocognitive impairment program that had a waiver in
8 it. The waiver said you either go into the benefits
9 program or you go into the tort system, but you
10 couldn't do both. The NFL in the context of this
11 settlement has agreed to waive that. So now players
12 can avail themselves of the settlement and they can
13 avail themselves of the benefits. There's going to be
14 no problem there with that.

15 THE COURT: That's correct, is it not?

16 MR. KARP: It is, Your Honor, and I'll
17 be addressing that in my remarks shortly.

18 THE COURT: Okay.

19 MR. SEEGER: We don't touch workers'
20 compensation claims, they can still file them, or
21 other claims. If a player thinks that they should
22 bring a case against their high school or their -- or
23 college they can do that. There's no release of those
24 claims.

25 I'd like to talk for a minute now about

1 class notice. I've never been involved in a case
2 where the notice was as extensive, as well written as
3 in this case, and there is evidence -- there is
4 evidence of the effect of this good notice, which I'm
5 going to get to, but let me first mention that we
6 directly mailed over 33,000 notices -- actual notice
7 to retired players and their families.

8 We had it on television programs, we
9 published notice, we had short forms of the notice
10 that said -- even though it didn't lay out in that
11 one-page short form the entire deal, it told them
12 where to go to find out, and that's important.

13 We had a website. That's important
14 because we -- I'm going to show you in the next slide,
15 but I want to spend a moment on this, I want to talk
16 about media, but on the next slide I'm going to show
17 you what the impact of that notice was. We can do
18 that here.

19 This case was extensively covered in
20 the media from the time we filed the case. Every
21 aspect of it, every change in the settlement, when
22 Your Honor denied preliminary approval stories were
23 run, they were repeated hundreds of times, every
24 aspect of the settlement was discussed and criticized
25 by the press, and some aspects I believe unfairly, but

1 it was out there, you know, everybody was talking
2 about it.

3 In addition to that the objectors had
4 their own websites. Mr. Molo had a website with his
5 objectors putting in my view misinformation out there
6 about the settlement. But they did it and that's what
7 it is. It didn't really have much of an impact, but
8 I'll come back to the point about why it's important.

9 As a result of this notice we had
10 66,000 visits to our website in a class of over
11 20,000. That's amazing. That means family members
12 for those who probably couldn't -- are checking the
13 website and getting information.

14 We had more than 4,500 calls to our
15 call center. Twenty-three hundred callers spoke with
16 a live operator.

17 Over 5,000 players preregistered
18 themselves for benefits, and the registration program
19 is not yet open, but they've asked to be included and
20 gave their identifying information.

21 And as a result of that we have less
22 than one percent of the class has opted out. And I'll
23 tell you something interesting about that. That
24 number is going down. Because if you -- if we -- you
25 look at the reports filed by BrownGreer players are

1 coming back and saying I made a mistake, I want to
2 come back in. I hope that continues. They can come
3 back in. But the number was up over 200 and now it's
4 down as of today to 199. So players are coming back.

5 Now why is that important? Because I'm
6 not aware of a case that had so much information.
7 There was extensive press coverage as I said, and in
8 addition to that websites like Mr. Molo where they
9 spoofed off our name where the name of our website was
10 "Concussion Settlements," he's created a website
11 called "Concussion Settlement Facts."

12 MR. MOLO: Judge --

13 MR. SEEGER: I'm presenting Mr. Molo.

14 THE COURT: You can respond.

15 MR. SEEGER: You've spoken, this is my
16 time.

17 THE COURT: You can respond.

18 MR. MOLO: No, because this is not
19 correct. Thank you.

20 MR. SEEGER: I get to speak for the
21 class.

22 Judge, I'm not upset with Mr. Molo
23 about it. It's important -- it's an important fact
24 for the record.

25 THE COURT: Well despite the fact that

1 you're not happy about it I appointed Mr. Molo to
2 represent the defendants.

3 MR. SEEGER: No, I wasn't happy about
4 it.

5 MR. MOLO: Thank you.

6 MR. SEEGER: I'm not even happy he's
7 here.

8 (Laughter)

9 MR. SEEGER: But now I get a chance to
10 talk to Your Honor, and I get to speak for the over
11 20,000 players who said yes for the settlement.

12 The one -- the less than one percent
13 who have opted out has gone down, but the only point I
14 want to include on, and I'm going to move off it, is
15 the fact that I'm not aware, except in one other case
16 we found from the district of New Jersey, where
17 objectors launched a campaign against our notice
18 campaign and we still have this result. That's my
19 only point. And less than one percent objecting.

20 Your Honor, I'm going go through some
21 of the Rule 23 factors pretty quickly because we don't
22 really have a disagreement, even the objectors don't
23 dispute that there's numerosity in this case, we have
24 over 20,000 retired players.

25 The common questions there's no real

1 dispute. What are they? The -- some of the questions
2 that are common to this class are the nature and
3 extent of the duty of the NFL to the retired players,
4 whether the duty was breached, whether the NFL knew
5 and suppressed information, whether these concussive
6 and sub-concussive hits increased the risk of the
7 Alzheimer, ALS, Parkinson's, dementia, and
8 neurocognitive impairment, whether the NFL's
9 affirmative defenses are preemption workers' comp
10 would have barred discovery. Those are the common
11 questions, no real dispute on that.

12 Typicality is met in this case, because
13 the conduct that we allege arises -- it's the same
14 conduct throughout the class. The class
15 representatives, Shawn Wooden, played nine seasons in
16 the NFL, he experienced concussive and sub-concussive
17 hits, he suffers from neurological symptoms, although
18 they're not a qualifying diagnosis, and he has
19 headaches, sleep problems, mood swings, concentration
20 loss, all the things that we had in our complaint. He
21 has not been diagnosed with a qualifying injury.

22 Kevin Turner who is our Subclass II
23 representative played eight seasons in the NFL for the
24 Patriots and the Eagles. He experienced numerous
25 concussive and sub-concussive hits and he was

1 diagnosed with ALS, which is a qualifying condition in
2 2010.

3 So the conduct arises from the same
4 conduct. Shawn Wooden, Kevin Turner, retired NFL
5 players whose claims arise from the same conduct as
6 the two subclasses.

7 Predominance. Again, these questions
8 predominate over individual issues. No real dispute
9 here, not many objectors have even raised this as a
10 concern.

11 Superiority we know under Anchem (ph) is
12 really not an issue because the whole idea here is to
13 avoid a trial. So the issue of manageability is a
14 non-issue here.

15 Adequacy we do have some push back from
16 some of the objectors, and I'll spend a minute or two
17 talking about it. Adequacy is a two-prong inquiry.
18 It looks at the qualifications of counsel and it looks
19 to whether there's a conflict between the subclass
20 representatives and their interests and the interest
21 of the class.

22 Co-lead counsel -- my qualifications
23 are in my affidavit, Your Honor. When you look at my
24 qualifications, Saul Weiss' qualifications, Gene
25 Locks, Steve Marks, Arnold Levin, Diane Nest, these

1 are attorneys who do this every day. This is not our
2 first case like it is for some of the objectors'
3 counsel. We do -- we handle personal jury cases.
4 This is what we do. And we do it time in and time and
5 again, and our qualifications are pretty well laid
6 out. We have tried numerous bell weather cases. I
7 myself have tried numerous bell weather cases in MDLs
8 and in front of many judges in state and federal
9 court, which are representative trials.

10 We have litigated preemption issues,
11 Daubert issues, dispositive challenges involving
12 complex injury claims.

13 We've negotiated the resolutions -- if
14 you add my co-counsel in the number will go up to many
15 billions of dollars in settlements that have been
16 handled. Arnold Levin was co-lead counsel in the Diet
17 Drugs litigation. A multi-billion settlement right
18 here in the Eastern District. We have handled --

19 THE COURT: Someone is having trouble.
20 Yeah, maybe they want some water?

21 MR. SEEGER: Oh.

22 THE COURT: We don't give much around
23 here, but we do -- we do give water.

24 MR. SEEGER: I've got an extra bottle
25 right here. I have a cold so you won't want mine.

1 The lien --

2 THE COURT: Thank you.

3 MR. SEEGER: -- resolution program that
4 we are presenting to Your Honor as part of this deal,
5 this is -- we've done this in numbers of cases. In
6 fact I believe it might have been -- I was co-lead
7 counsel in a case in front of Jack Weinstein involving
8 a drug called Zyprexa where it was one of the first
9 cases where we rolled out the lien resolution program
10 on a mass-wide basis throughout -- make sure she's
11 okay? You all right? And it was very, very
12 successful there. It was very successful in Vioxin
13 and many other cases where it's been done.

14 So we've got the -- we've got the two
15 separate subclasses. Subclass I, who Mr. Wooden
16 represents, are players who've been injured, have
17 played in the NFL, suffered concussions but not yet
18 have a qualifying diagnosis. Kevin Turner, Subclass
19 II representative has had concussions, played in the
20 NFL, represents players with a qualifying diagnosis.

21 And why this works and why there are no
22 conflicts, Your Honor, is for the reason in this
23 slide. The motivation of Subclass I was to insure
24 that without -- that players without a qualifying
25 injury today would have the money later to compensate

injuries that would come down the road in the future.

Subclass II was motivated to bargain for the best deal that they could presently get, and because the monetary award fund is an inflation adjusted and uncapped any possibility of a conflict between those two classes is eliminated.

And we have language from prudential where it says:

"Where both named plaintiffs and other class members would need to prove the same allegations in order to succeed on any of the claims the proposed class satisfies the adequacy of representation requirement of 23(a)."

Now what are some of objectors' adequacy complaints? Well they say we should have had numerous subclasses. When you figure out all the subclasses that all the objectors together say we should have had, when you layer on top of that public citizen we would have had the problem that we were warned against in the Cendant litigation, which is a balkanization of this class action to the point where every little interest would be represented and you would never be able to put a settlement together with the NFL or any defendant. It would -- the settlement would implode on itself. That was the problem.

1 The interests are represented by the
2 class by these two subclass represents, the classes
3 work perfectly, they involve all NFL players diagnosed
4 and not diagnosed today, it is uncapped and inflation
5 adjusted. There is no conflict.

6 As our expert, Professor Calanoff (ph)
7 says, too many subclasses is just inherently
8 unmanageable.

9 So what do they say? The settlement
10 should provide what they're specifically saying,
11 because this really isn't about adequacy, it's about
12 where you draw the line. We want more money, we
13 should have gotten more money, we should have defined
14 the qualifying diagnoses differently, we should employ
15 different award reductions, they don't like the way we
16 did that, and they don't -- they generally just don't
17 like the way we did it, so they want to do it their
18 way. But these aren't objections to adequacy, they're
19 objections to where the lines were drawn.

20 As you can see from Judge Phillips'
21 quote from his affidavit, "The compromise was reached
22 after many months of vigorous arms length negotiations
23 supervised by a court-appointed mediator." In that
24 case it was Judge Phillips, and in the settlement
25 after you denied preliminary approval, Your Honor, it

1 was Special Master Golkin.

2 The class representatives' interest are
3 closely aligned with those of the class members such
4 that fair and adequate representation can be insured
5 and sufficient unity exists for the settlement class
6 certification purposes.

7 There are no Anchem issues as has been
8 asserted. There are no futures issue. The entire
9 class played in the NFL is discernible and was exposed
10 to head impacts. The monetary award fund is uncapped.
11 Awards are inflation adjusted and there's no cash flow
12 maximum. After final approval the NFL is bound, they
13 can't walk from the deal. And the two subclasses and
14 separate representation afforded structural protection
15 beyond those afforded by the deal itself, Your Honor.

16 So, I'd spoke earlier about the strong
17 presumption in the Third Circuit in favor of voluntary
18 settlement agreements. This presumption is especially
19 strong in class actions. That's from the Sullivan
20 case. And there's an overriding public interest in
21 settling class action litigation.

22 In order for Your Honor to assess the
23 fairness of this Girsh versus Jepson says to Your
24 Honor there are nine factors that have to be
25 satisfied, and I will quickly go through those.

1 The first one is the complexity and the
2 duration of the litigation. Well the complexity --
3 just think about what the discovery would have been
4 like in this case in any kind of a case involving
5 neurocognitive problems. Let's take, you know,
6 depression, for example.

7 I have handled suicide cases, I've
8 handled depression cases, I know what discovery looks
9 like in those cases. I've personally handled those.
10 They ask for everything. They ask for educational
11 records that go back to the time you were
12 kindergarten. They want the educational records of
13 your parents, because part of the neurocognitive
14 profile is it's a loss of intelligence so they want to
15 -- they want to get those records. When you're
16 talking about depression they want to know what kind
17 of drugs you take. Are they legal or are they
18 illegal? Do you drink alcohol? What is your -- what
19 is your sexual orientation is important. I've had
20 that come up in depression cases. Do you -- are you
21 involved in extramarital affairs? Do you have
22 financial problems?

23 You could just imagine I could go on
24 and on what the list would be of what the NFL would
25 want in a case that was going to trial involving the

1 claim of anger or depression or some of those other
2 things.

3 The NFL would attack plaintiffs'
4 experts on Daubert. You've seen their affidavits,
5 Your Honor, that's a glimpse of what the case is going
6 to look like for opt outs who will want to go to
7 trial. That's what they'll be dealing with.

8 Prior to trial the NFL would challenge
9 many of the legal issues. We were fighting
10 preemption. Your Honor noted herself the risk
11 involved in that. But, you know, when -- and I have a
12 slide where I want to talk about preemption. The NFL
13 has one preemption cases in other parts of the
14 country. It's not like, you know, we just said, hey,
15 there's risk, I'm talking about now co-lead counsel's
16 assessment of the risk on that, which is important.
17 It doesn't relate to anything that happened in this
18 court. I was able to look at what the law was and
19 look at what the risk was in other courts, and I'll
20 talk about that.

21 And it would be a -- it would have been
22 an expensive, scorched earth litigation, we know that
23 because parties who have litigated with the NFL know
24 that they're in it typically for the long haul and
25 what that means.

1 The reaction of the class to the
2 settlement, I speak about it in the notice. We had
3 extensive notice, we had extensive media coverage,
4 including misinformation campaigns, and then unrelated
5 to what Mr. Molo is doing, we had players themselves
6 -- this is a cohesive community. I mean these guys
7 are like the marines, they talk to each other, there
8 is a -- there is a brotherhood here. If you go on any
9 chat room or blog site there are many of them
10 discussing the settlement all long. And they talk to
11 each other, they have email lists for each other. I
12 mean we're talking about like household names. When
13 you mention the name of an NFL player all these other
14 plays know who they are, they're friends with them.
15 So they're very cohesive and they were talking to each
16 other, and they decided to overwhelmingly accept this
17 deal.

18 So the class reaction has been
19 extremely positive, and in the Third Circuit really
20 argues in favor of approval just on that point alone.

21 The stage of the proceedings we were
22 in, I mean Your Honor knows this, we were in the
23 process of litigating a threshold issue on preemption.
24 We had very important legal issues besides the
25 preemption issue. The NFL, and they've said this in

1 their papers, intended to bring a motion to hold the
2 NFL as a co-employer with the teams. If that would
3 have happened all of the players would have been
4 relegated to a workers' comp claim. And as I said,
5 they would have challenged the science at every level.

6 And at the end of the day this was a
7 science-driven case. Everything that the plaintiffs'
8 lawyers needed to know about the science was in the
9 medical literature. We've read it -- we read it all,
10 we studied it all, we know everything that the experts
11 that are proposed by the objectors have had to say, we
12 know everything they've published, we know everything
13 our experts have said, we know -- we knew everything
14 that was out there, and at the end of the day it was a
15 science-driven case.

16 People can talk about discovery, you
17 can talk about fraud, you can talk about these issues,
18 but you don't get to jump over causation and go right
19 to those issues. As you know, Your Honor, we would
20 have to prove all of those elements to get the case to
21 the jury.

22 The parties and Judge Phillips, says,
23 this is a comment from his affidavit:

24 "The parties consulted with and relied
25 on their respective independent medical experts in the

1 fields of neurology, neuropsychological, and other
2 relevant specialties in order to understand the
3 science regarding the diseases associated with
4 concussive head trauma and their pathologies to
5 evaluate the strength of plaintiffs' claims."

6 The risks of establishing liability,
7 risk of establishing damages, factors four and five
8 under Girsh. Well, I've been through these and I
9 don't think I need to spend too much more time on
10 them.

11 Statute of limitations would have been
12 a big part. Our settlement allows a player who played
13 in the '80s if he gets sick today to come in and get
14 compensated. You know, I'm not going predict whether
15 that claim would be dismissed on a statute of
16 limitations, but we could all as attorneys and judges,
17 we can all look at that and see that there are issues
18 there whether that case would be time barred or not.
19 It isn't time barred in this settlement.

20 Assumption of risk would have been a
21 big factor by the NFL.

22 Now, I want to talk a little bit about
23 the preemption issue, because it gets pooh-poohed from
24 time to time, but it was a big issue, Your Honor, and
25 if you remember we brought in one of the country's

1 best authorities on preemption, David Fredericks, to
2 come in here and argue to Your Honor. The NFL brought
3 in an expert. We extensively briefed it. I mean the
4 briefs went on for pages and pages and pages. Your
5 Honor unfortunately had to read all that because we
6 settled right before you were about to rule. But
7 here's a case involving a player, Stringer, where the
8 Court found preemption and dismissed the case. That
9 was a factor going into this.

10 THE COURT: Is that the California
11 case?

12 MR. SEEGER: This was Corey Stringer.
13 The Corey Stringer case. I'm not exactly sure what
14 court.

15 MR. KARP: I believe it's Minnesota.

16 THE COURT: Minnesota. Okay.

17 MR. SEEGER: Thank you.

18 THE COURT: Thank you.

19 MR. SEEGER: Maxwell versus the NFL.
20 Here we have a quote from the opinion that says, "The
21 Court finds that plaintiff's second cause of action
22 for negligence against the NFL is preempted."

23 And although this next one I'm showing
24 I'm not asserting for the fact -- I'm not saying the
25 case has been dismissed at any means, Mr. Duerson (ph)

1 is in the class, but here is a case from the Northern
2 District of Illinois where the judge in a different
3 context commented:

4 "That even if the NFL's duties -- I'm
5 sorry -- NFL's duty arises apart from the CBAs
6 therefore the necessity of interpreting the CBAs" --
7 the collective bargaining agreements -- "to determine
8 the standard of care still leads to preemption."

9 This is what the players were up
10 against, Your Honor.

11 And we would have had to establish, as
12 I've commented both general causation, that is due
13 concussions caused these diseases, and then we would
14 have had to prove specific causation. So the player
15 would have had to prove that there was a documented
16 concussion, that his problems occurred in the NFL as
17 opposed to college, high school, or pop warner, and
18 that the specific disease we were complaining of in
19 that case was directly related to the concussions.

20 Girsh factor six, the risks of
21 maintaining a class action.

22 Well, Your Honor, the one big piece of
23 this case that gets put aside in the context of a
24 settlement, because the idea is to avoid a trial, is
25 the issue of manageability. That issue in the context

1 of a settlement is put aside. But in the context of a
2 litigation between us and the NFL the NFL would have
3 fought manageability very tough and it could have been
4 a big issue there. It could have prevented class
5 certification. And then even if Your Honor granted
6 the class for us, as we believe we would have asked
7 you to and think you should have, the NFL had the
8 right to go up to the Third Circuit, as Mr. Molo did
9 when he took us up on the 23(f) appeal, the NFL could
10 have done that.

11 The seventh factor, the ability of the
12 defendants to withstand a greater judgment. Your
13 Honor, I don't have to spend a lot of time on this
14 because Your Honor has written on this. This is a
15 case that you handled, Your Honor. I'm going to say
16 it wrong, I think it's Jakesian (ph). I guess, you
17 know, the only thing -- the only question I raise
18 here --

19 THE COURT: You're insisting I be
20 consistent, is that what you're -- are you insisting
21 that I be consistent?

22 MR. SEEGER: Yes, we would like you to
23 be, Your Honor.

24 (Laughter)

25 MR. SEEGER: I'm quoting back your

1 case. Which is something actually by way of passing
2 I'll note that Mr. Molo waited until the day before
3 our brief was due to actually brief this factor. And
4 guess what he -- he put a lot of information about how
5 much money the NFL has, all their contracts, guess
6 what he didn't put in that supplemental brief? Your
7 case. I can't figure that out. Maybe he can explain
8 that when he stands up.

9 And Your Honor said and that courts in
10 this district regularly find that, you know, the issue
11 is really neutral on the ability to pay. It really is
12 a factor when you have a defendant who might not be
13 able to pay. That's not the case here, Your Honor.

14 The range of reasonableness of the
15 settlement in light of the best recovery. Well, I
16 mentioned earlier I, co-lead counsel, class counsel,
17 the PEC, and we draw upon that experience, have
18 negotiated many of these settlements.

19 I will tell you that the values
20 achieved in this settlement are on the high end of
21 what anybody could find that's out there in the
22 context of a class or even a mass aggregate
23 settlement. These are very rich values. In many
24 cases with the younger players that go into millions
25 of dollars, and with the older players they don't go

1 into millions of dollars. And I'll discuss why -- why
2 that adjustment was made, but they're still very
3 significant values that I would challenge anybody to
4 say anything about in the context of a deal like this.
5 They are on the high end.

6 I handled the PPA litigation in front
7 of Judge Barbara Rothstein who ultimately -- who
8 approved that -- that was a class case -- who approved
9 that. This settlement had better values. That
10 involved injuries relating to stroke, and she
11 ultimately became the head of the Federal Judicial
12 Center. In Diet Drugs, Arnold Levin handled that
13 case. Those are substantial values. I would say this
14 settlement has richer values than that one does. And
15 in Vioxx, a case that I handled that settled for
16 almost \$5 billion. I could tell you that on a
17 generalized basis the values here are higher.

18 And I said in my declaration that we
19 strived to obtain the best overall deal we could for
20 plaintiffs taking into consideration the projected
21 incidents of plaintiffs' injuries, the value of the
22 claims, the risk of the litigation, including the
23 pending motions at the time on preemption.

24 And Judge Phillips says:

25 "In particular it's my considered

1 judgment that plaintiffs would be unlikely to have
2 obtained more money and benefits without going through
3 years of discovery and trial where they would face
4 substantial risk of loss due to their inability to
5 prove negligence or fraud on the part of the NFL
6 parties or judgments below what they will receive in
7 this proposed litigation -- this proposed settlement."

8 So, I want to deal now with some of the
9 objectors' concerns, because they don't really impact
10 at all the fairness of this case. It's really line
11 drawing that they could have done it better or should
12 have gotten more, should have tweaked this that way.

13 So they say the settlement doesn't
14 compensate CTE in living persons. That is one of the
15 biggest misinformation points that some of objectors'
16 counsel has put out there.

17 This settlement does not compensate
18 CTE, it compensates the injuries and the diseases, the
19 most significant ones that we were able to agree upon.
20 The injuries and diseases associated with CTE. So
21 let's make that clear right off the bat.

22 CTE is not diagnosable in living
23 people. Their experts agree with that. There is for
24 way to detect CTE in a living person today. And the
25 settlement -- the settlement compensates the most

1 serious neurocognitive and neuromuscular injuries
2 associated with TBI, and that is ALS, Alzheimer,
3 Parkinson's, and dementia, which had been reported in
4 patients determined to have CTE. Those are from our
5 declarations of our experts Dr. Fisher and Dr. Deza
6 (ph).

7 Through the pathological diagnosis of
8 -- though the pathological diagnosis of CTE is not
9 compensated as an injury perspective, the most
10 serious cognitive impairments developed in living
11 retired players that have been associated with the
12 literature we see here are compensated. The most
13 serious diseases are compensated.

14 It says, "The settlement doesn't
15 compensate" -- and these are all the things they say
16 that could have been compensated in their opinion.
17 Epilepsy, multiple sclerosis, deafness, dizzy spells,
18 vision problems, headaches, depression, mood swings,
19 substance abuse.

20 The plaintiffs -- we demanded going
21 into this settlement we wanted compensation on all of
22 those things, they're alleged in our complaint, but as
23 I said early when we started, that when you get into a
24 tough negotiation with a party like the NFL and things
25 have to be factored in. The science of the case, the

1 risks of litigating, all those things come to play.
2 At the end of the day we wound up with an excellent
3 settlement that tests young players or even older
4 players to find out if they have any of these
5 problems, if they do and they have a qualifying
6 diagnosis they get compensated, and if they don't
7 they're going to find out right away what their
8 condition is. And if they ever progress down the road
9 the fund will be there for them.

10 Now one of the problems that we have,
11 and maybe the objectors can address this when they
12 stand up, is that these things that they said need to
13 be included, depression, these are things that occur
14 in the general population and are reported independent
15 of concussions.

16 If you go a search on Goggle right now
17 for the amount of money the pharmaceutical industry
18 makes selling antidepression drugs you will find out
19 that tens of millions of people take them and they
20 make tens of billions of dollars selling they will,
21 and those people don't play in the NFL.

22 I'm not pooh-poohing or diminishing
23 depression, I believed it was associated with
24 concussions, but you have to take the science as it
25 exists at the time you're negotiating, and even

1 plaintiffs' experts can't conclusively say that
2 depression is associated with it -- I mean objectors.

3 It's reasonable for settling parties to
4 make choices and compromises. If a class member with
5 one of the excluded conditions was upset he had the
6 opportunity to opt out, and that's something that did
7 not occur in a big way in this case. There are under
8 200 opt outs in a class of over 20 something
9 thousands.

10 So the objectors say monetary award
11 offsets are unfair and they have complaints concerning
12 the reductions for fewer than five years in the NFL
13 play, reductions based on age, reductions based on
14 stroke or severe brain trauma before a qualifying
15 diagnosis. And each and every one of those reductions
16 had a reason in logic, science, and fact.

17 The reductions as Tom Vasquez (ph), our
18 expert says -- our economist:

19 "Reduction is based on years -- on
20 years played accounts for reduced exposure to the NFL
21 impact relative to a player's earlier years of play
22 versus college, high school, and grade school.

23 Reductions based on age at diagnosis
24 reflects relative grade or joint casualty for
25 background risks with increasing age."

1 What we found in the medical literature
2 is that when you get over the age of 60, when you're
3 70 years old you're -- the chance of developing
4 dementia just by the aging process and other things
5 that go on in the body, was much higher than the risk
6 of you developing that -- and I say you in the generic
7 way -- or a player developing that because it related
8 to concussions or NFL play, which would have occurred
9 20, 30 years prior.

10 Reductions for stroke and severe TBI
11 parallel medical references showing increased risk for
12 such events and greater difficulty establishing
13 liability at a trial with such facts. Each of these
14 points though --

15 THE COURT: What's TBI?

16 MR. SEEGER: Traumatic brain injury.

17 THE COURT: Okay. Thank you.

18 MR. SEEGER: Each of these points I
19 want to make clear though was the subject of fierce
20 and protracted negotiations. We fought on every
21 single one of them, and there were times they walked
22 out of the room, and there were times we walked out of
23 the room, and we were screaming at each other on the
24 phone in the early morning hours while objectors --
25 many of the objectors' counsel didn't even have a

1 horse in the race. Some of them don't even have
2 clients that filed a case. They were not involved.
3 They didn't offer their services to us then. We only
4 found out about them once the settlement came up.

5 Professor Calanoff says:

6 "Objectors' complaints reduced to one
7 of how the settle's lines were drawn. If drawn
8 differently or more favorably toward objectors another
9 class member would have a concern as to the place
10 where that line fell."

11 You're not going to make anybody happy
12 in a line drawing battle.

13 So what we got, as I started out
14 saying, was something that maybe isn't perfect, but it
15 is really good and it is clearly fair.

16 And that is the end of my presentation.
17 And I actually think I came up a little bit early on
18 time, Your Honor.

19 THE COURT: Okay.

20 MR. SEEGER: So I will hand off now to
21 Mr. Karp.

22 THE COURT: One second. Let me -- let
23 me speak with counsel at side bar, please.

24 MR. SEEGER: Sure.

25 THE COURT: For one moment. No, I'm

1 going to speak to -- Mr. Molo, I just want to speak to
2 counsel who were up here. I'll speak to you later.

3 This is -- this has to do with --

4 (Sidebar)

5 THE COURT: (Indiscernible - 10:44:11).

6 All right. Please come forward.

7 MR. SEEGER: Do you want us to remain
8 up here?

9 THE COURT: Yes. Please come up.

10 Yeah. (Indiscernible - 10:44:32). Listen, the
11 question -- and I want you to be prepared, the
12 question I -- Mr. Molo, hello.

13 MR. MOLO: Hello, Judge. Thank you for
14 having me.

15 THE COURT: Right. Because if they
16 finish early I'm going start with you.

17 MR. MOLO: Whatever -- however you want
18 to handle it. However you want to do it. Can we take
19 a break at 11:00 (indiscernible - 10:44:54) to be able
20 to complete my presentation at noon time
21 (indiscernible - 10:44:57).

22 THE COURT: Yes. Okay. Well then you
23 should be able to go to 1 o'clock.

24 MR. MOLO: Yeah. Yes.

25 THE COURT: I mean I don't think a half

1 hour should be -- we're at 11:00, and it would take
2 five minutes for a break, it's 12:00, and we'll have
3 -- we'll put your particular presentation on.

4 MR. MOLO: Okay. Okay.

5 THE COURT: All right. (Indiscernible
6 - 10:45:16) come back.

7 MR. MOLO: Sure.

8 THE COURT: Is that okay?

9 MR. MOLO: Yes.

10 UNIDENTIFIED SPEAKER: Thank you, Your
11 Honor.

12 THE COURT: All right. Okay.

13 (Sidebar concluded)

14 THE COURT: Just a little bit of
15 tidying up about when we're going to again and when
16 we're going end.

17 Okay. Mr. Karp, are you next?

18 MR. KARP: I am, Your Honor.

19 THE COURT: All right.

20 MR. KARP: Okay. Good morning, Your
21 Honor.

22 THE COURT: Good morning.

23 MR. KARP: I'm Brad Karp, counsel for
24 the National Football League and for NFL Properties.
25 With me at counsel table are my partner, Bruce

1 Birenboim.

2 MR. BIRENBOIM: Good morning, Your
3 Honor.

4 MR. KARP: NFL senior counsel Anastasia
5 Danias, Bob Heim from the Dechert firm.

6 MR. HEIM: Your Honor.

7 MR. KARP: And I would also like to
8 introduce my stellar team at Paul, Weiss. We have my
9 partner, Lynn Bayard.

10 MS. BAYARD: Good morning, Your Honor.

11 MR. KARP: Brian Stekloff.

12 MR. STEKLOFF: Good morning, Your
13 Honor.

14 MR. KARP: Doug Burns.

15 MR. BURNS: Good morning, Your Honor.

16 MR. KARP: Ralia Polechronis.

17 MS. POLECHRONIS: Good morning.

18 MR. KARP: And we're also pleased to
19 have with us today Sheila Burnbalm (ph).

20 MS. BURNBALM: Thank you.

21 MR. KARP: Uh-huh. I will try to keep
22 my opening remarks brief, Your Honor, and I'll try not
23 to repeat each of the points raised by Mr. Seeger.

24 THE COURT: Okay. Thank you.

25 MR. KARP: Although I will repeat the

1 point raised at the outset by Mr. Seeger that the NFL
2 believes too that this is an historic settlement.

3 The proposed settlement provides
4 substantial and monetary compensation, indeed
5 unprecedented monetary compensation up to \$5 million
6 per player for retired NFL players who develop
7 significant neurocognitive and neuromuscular
8 impairments associated with specific diseases and
9 specific conditions.

10 The proposed settlement provides the
11 substantial monetary awards without requiring any
12 showing whatsoever of causation. In other words,
13 there is no requirement that players prove that
14 playing in the NFL caused their impairments.

15 The settlement program runs for 65
16 years, a period of time sufficient to cover each of
17 the 22,000 plus retired players.

18 The monetary awards are inflation
19 protected.

20 The NFL has guaranteed payment of full
21 compensation to every eligible retired player over the
22 life of the settlement, and the NFL's ultimate
23 liability is uncapped.

24 In addition to these uncapped,
25 inflation protected, substantial monetary awards the

1 proposed settlement also includes a comprehensive
2 program of baseline neurocognitive testing. This
3 program to be funded entirely by the NFL provides
4 therapy, treatment, and medicine to NFL players who
5 show early signs of neurocognitive decline, and it
6 will help NFL retired players and their families
7 understand the player's current level of cognitive
8 functioning.

9 I want to emphasize, Your Honor, that
10 these monetary compensation awards and these
11 supplemental benefits are on top of the NFL's existing
12 health benefits and disability programs, programs that
13 have been collectively bargained and that will remain
14 in full force and full effect.

15 As part of this settlement the NFL has
16 agreed not to seek offsets and not to seek reductions
17 for payments made to NFL players under these programs.

18 And finally, as Mr. Seeger noted, the
19 proposed settlement establishes an education fund
20 which will be funded by the NFL and overseen by this
21 Court. That fund will support safety and injury
22 protection programs at all levels of football and will
23 educate retired NFL players about the NFL's existing
24 medical and disability benefit programs.

25 The NFL is proud of this settlement.

1 THE COURT: One second before you go on
2 about the education fund you know there has been a
3 good deal of criticism sipray (ph), and I've been
4 criticized for allowing certain sipray conditions.
5 Would you consider this sipray?

6 MR. KARP: No, this is an independent
7 part of the settlement that is funded separately and
8 distinct from the BAP program and from the monetary
9 award program, and under the Third Circuit's decision
10 in Baby Products it is not a sipray issue, and we
11 discuss that in our brief pages 139 to 141.

12 Again, Your Honor, the NFL is proud of
13 this settlement.

14 In entering into it the league put
15 aside its very strong legal and factual defenses and
16 we agreed not to litigate. Instead, as Your Honor is
17 aware, we focused on negotiating a settlement that
18 would provide substantial compensation and other
19 critical benefits to retired players and years and
20 years and years sooner than would have been possible
21 in a litigated context.

22 And it's important to keep in mind --
23 and this has been missing from the public debate --
24 that the NFL had a fundamental choice to make in this
25 matter. The league could have fought these claims,

1 successfully fought these claims in my view for many,
2 many years. But as Your Honor observed in your
3 July 14th preliminary approval decision, and as
4 Mr. Seeger stressed in his opening remarks, the league
5 has several powerful -- indeed the league had several
6 dispositive legal and factual defenses to the claims
7 asserted by plaintiffs. The objectors entirely ignore
8 this reality and this context in their extensive
9 papers.

10 I don't want to belabor this point, but
11 I would like to provide some context here.

12 This settlement cannot be viewed in a
13 vacuum as the objectors and as many in the media have
14 attempted.

15 The NFL, as you heard a few moment ago,
16 has a significant pending motion before this Court
17 that these cases should be dismissed at the very
18 outset because the underlying claims asserted by the
19 plaintiffs are governed by the players' collective
20 bargaining agreements with the NFL and therefore are
21 preempted by federal labor law.

22 As Mr. Seeger noted while this Court
23 has not yet decided the NFL's preemption motion,
24 numerous courts around the country have and they have
25 agreed with the NFL's position.

1 This single threshold issue posing
2 enormous risks to retired players, risks that have
3 been entirely ignored by the objectors in their
4 papers. And the challenge is that plaintiffs would
5 face in this litigation, as Your Honor is aware and as
6 Your Honor wrote, extend far, far beyond preemption.

7 For example, even if some of these
8 cases survived a preemption ruling plaintiffs would
9 still face numerous substantial legal and factual
10 hurdles that would likely result in the dismissal of
11 their claims, if not at the outset of litigation, most
12 certainly before trial.

13 These defenses include statutes of
14 limitation, assumption of risk, causation, the lack of
15 any factual support for plaintiffs' claim of
16 concealment, and on and on and on. These defenses are
17 outlined in some detail in our brief asking this Court
18 to grant final approval. The objectors entirely
19 ignore the existence of all of these defenses and the
20 huge risks they pose for plaintiffs.

21 The proposed settlement agreed to by
22 the NFL eliminates not only the very significant risks
23 of defeat for the retired players, but also the huge
24 cost to all retired players of years and years of
25 contested litigation.

1 To put this in perspective consider if
2 you will the reality of how this would play out in the
3 absence of a settlement. Absent a settlement
4 currently symptomatic retirees, if their claims
5 somehow were to survive preemption, would be required
6 to spend many years and many, many millions of dollars
7 in legal fees litigating highly uncertain claims that
8 likely in our view would leave them empty handed in
9 the end.

10 And absent a settlement currently
11 asymptomatic retirees, if their claims were to somehow
12 survive preemption, would face an uncertain future
13 knowing that if they ever developed a significant
14 neurocognitive or significant neuromuscular impairment
15 they would then, and only then, need to embark on a
16 protracted and expensive litigation with the odds
17 stacked decidedly against any recovery.

18 The proposed settlement before Your
19 Honor entirely eliminates all of these very
20 substantial risks. It provides all retired players,
21 whether symptomatic or asymptomatic, with the peace of
22 mind that substantial monetary compensation and other
23 substantial benefits will be available if and when
24 they are needed without any risk and without any
25 uncertainty.

1 What has been lost in the fog of the
2 objections is that the league chose to do the right
3 thing here. It agreed to put aside its substantial
4 factual and legal defenses to work with plaintiffs
5 under the supervision of this Court, the mediator, and
6 the court-appointed Special Master Perry Golkin, to
7 negotiate the consensual resolution that provides
8 substantial monetary compensation and substantial
9 other benefits to retired NFL players and to their
10 families.

11 The settlement provides this
12 compensation and these benefits to those who are most
13 deserving and most in need of immediate help, and
14 critically it provides this compensation and these
15 benefits many, many years sooner than would have been
16 possible through a protracted and bitterly contested
17 litigation.

18 The product of this year-long effort is
19 the proposed settlement pending before Your Honor.

20 For all the reasons set forth in our
21 extensive papers and supported by our medical and
22 expert declarations we submit that the proposed
23 settlement is fair, reasonable, and adequate under
24 well-settled law in this circuit.

25 First the settlement is fair,

1 reasonable, and adequate in absolute terms for the
2 reasons I've outlined, but just as important and
3 conspicuously absent from the broad public debate and
4 from the lengthy papers submitted by the objectors,
5 this settlement is manifestly fair, reasonable, and
6 adequate when one evaluates it in context.

7 In other words, how would the retired
8 players fair if they actually were to litigate these
9 cases? What relief would the retired players likely
10 secure five years or ten years from now if they
11 litigated these claims against the National Football
12 League?

13 Fair, reasonable, and adequate as
14 compared to the alternatives. That is the appropriate
15 inquiry. That analysis is entirely missing from the
16 public debate and from the objectors' papers.

17 I submit, Your Honor, that the proposed
18 settlement is measurably superior for the retired
19 players than the likely outcome of a protracted and
20 expensive litigation.

21 And of course as Mr. Seeger pointed
22 out, and as Your Honor knows only too well, any
23 retired player in the settlement class who believes
24 differently was free to opt out of the settlement and
25 free to pursue a litigation against the National

1 Football League.

2 At the end of the day this Court need
3 not accept my word and this Court need not accept Mr.
4 Seeger's word that the settlement is fair, reasonable,
5 and adequate. We urge the Court to consider the
6 overwhelmingly positive reaction from the 22,000 plus
7 retired players in the settlement class. They have
8 spoken clearly, they have spoken loudly, and they have
9 spoken unambiguously.

10 Under Third Circuit law, as Your Honor
11 knows, the reaction of directly affected class members
12 is persuasive evidence of a settlement's fairness,
13 reasonableness, and adequacy, and that is especially
14 true in this case.

15 And why do I say that? It is not
16 overstatement or hyperbole, Your Honor, to suggest
17 that the proposed settlement in this case has been
18 scrutinized and dissected more closely, more
19 relentlessly, and more publicly than any class
20 settlement in history.

21 The debate over its terms has been
22 widespread, it has been intense, and it has been
23 uniquely public.

24 The media presence here today is
25 emblematic of the unprecedented level of public

1 scrutiny that this settlement has attracted. And I'm
2 not only referring to scrutiny by the media, numerous
3 experienced and well-funded attorneys have vehemently
4 and publicly criticized the deal and campaigned
5 relentlessly to try to persuade class members to opt
6 out of the settlement class even creating websites to
7 do so.

8 Several of them are here today in this
9 courtroom, Your Honor, and they have been supported in
10 this effort by powerful voices in the media who have
11 wanted for their own purposes to see this settlement
12 fail.

13 But notwithstanding this unprecedented
14 level of scrutiny and these concerted efforts to
15 induce opt outs, more than 99 percent of the 22,000
16 plus class members have endorsed this settlement and
17 have decided to remain in the class. More than 99
18 percent of the class members support this settlement.

19 Why have the retired players supported
20 this settlement so overwhelmingly? There's several
21 reasons.

22 First, they recognize that the
23 settlement provides very substantial monetary and very
24 substantial other benefits.

25 Second, they recognize that the

1 settlement provides these monetary payments and other
2 benefits promptly, consistently, and fairly.

3 And third, and perhaps most important,
4 they recognize that this settlement will spare
5 thousands of retirees and their families the severe
6 financial and emotional cost, not to mention the very
7 substantial risk of defeat, associated with years and
8 years of litigation.

9 Nor we submit, Your Honor, should this
10 overwhelming showing of support be the least bit
11 surprising.

12 This settlement has been carefully
13 structured by the parties under the supervision of
14 this Court, the mediator, and the court-appointed
15 special master to be as fair as possible. Thus the
16 baseline assessment program provides class members
17 with a comprehensive program of neurocognitive testing
18 and related medical benefits funded by the NFL.

19 The monetary payments as noted up to
20 \$5 million per player will be made to retired players
21 who present medical evidence of qualifying diagnoses
22 without requiring these players to make any showing
23 whatsoever of causation. These diagnoses will be made
24 by qualified independent doctors working with the
25 settlement administrator appointed by this Court.

1 The offsets contained in the settlement
2 for age of diagnosis and for years played are
3 appropriate proxies for both causation and exposure
4 and are fully supported by established medical
5 science.

6 The awards are inflation protected.

7 The agreement provides for adequate
8 security of future payments, and the NFL's ultimate
9 liability in this settlement is uncapped. A point
10 that we appreciate was very important to Your Honor.

11 This overwhelming nearly unanimous show
12 of support by the class members themselves powerfully
13 underscores the fairness, reasonableness, and adequacy
14 of the proposed settlement.

15 You'll hear next from the objectors,
16 Your Honor, and I would like to note that the
17 objections before this Court are entirely typical of
18 objections seen in settlements of this type.

19 The objections are directed primarily
20 at attempting to increase for select categories or
21 groupings of retired players the already generous
22 awards provided by the settlement.

23 The objections, in our view, and as
24 laid out in our briefs, are entirely without merits.

25 And of course once again, Your Honor,

1 any retired player in the class who believed that the
2 awards should have been greater or the categories of
3 compensable conditions broader, or the procedural
4 protections more lax, or the applicable offsets more
5 modest, any player in the class was free to opt out of
6 the settlement and to pursue his own litigation
7 against the NFL.

8 There is certainly a have their cake
9 and eat it too aroma to these objections.

10 We'll respond to the specific
11 objections later this afternoon, but I'd like to spend
12 just a moment, if I may, Your Honor, addressing the
13 headline objection that the settlement does not cover
14 CTE.

15 That objection, as Your Honor know
16 doubt is aware, has received a great deal of public
17 attention, but that objection and the reporting of
18 that objection reflects a fundamental, if not a
19 deliberate, misunderstanding of this settlement, how
20 it works, and its scope.

21 As is crystal clear from its terms, and
22 Mr. Seeger made this point in his opening remarks,
23 this settlement compensates retired players who were
24 diagnosed with severe neurocognitive and neuromuscular
25 impairments.

1 As such, this settlement expressly does
2 compensate the significant neurocognitive and
3 neuromuscular impairments that allegedly are
4 associated with CTE, such as memory loss, such as loss
5 of executive function, such as attention difficulties,
6 such as loss of spatial and reasoning skills.

7 The objectors' suggestion that this
8 settlement does not cover CTE is not only not true,
9 but we submit that it is a deliberate effort to
10 mislead this Court and to mislead class members, an
11 effort that I might add has failed spectacularly since
12 99 percent plus of the class members did not fall for
13 it and now support the settlement.

14 The other CTE-related objection that
15 the settlement does not compensate mood disorder and
16 depression allegedly associated with CTE, likewise
17 reflects a fundamental misunderstanding of this
18 settlement and of settlement negotiations more
19 generally.

20 Mood disorders and depression are not
21 compensated under this settlement for a very simple
22 reason. These conditions are widely distributed
23 across the general population and have more proven
24 causes that have nothing in the world to do with
25 football and with CTE.

1 The fact that this settlement draws
2 lines on compensable conditions at various levels of
3 severity is entirely reasonable, entirely fair, and
4 frankly entirely predictable.

5 Every settlement of this type on
6 record, every single one does exactly the same thing,
7 and courts in this circuit, and for that matter courts
8 in every circuit in this nation, have found such line
9 drawing to be an appropriate and inevitable product of
10 arms length negotiations between experienced
11 plaintiffs' counsel and experienced defense counsel.

12 And, Your Honor, I would add again,
13 that any retired players who believed that mood
14 disorders or depression should be a compensable
15 condition was free to opt out of this litigation and
16 pursue those claims in a litigation against the NFL.

17 The fact again that more than 99
18 percent of the retired players chose to support this
19 settlement, perhaps the most publicly covered
20 settlement in history, speaks volumes about what they
21 and about what objectors' counsel really think about
22 the legal bona fides and the value of these claims.

23 Let me touch upon very briefly, if I
24 may, Your Honor, the objectors' other complaints.

25 For example, the reductions and offsets

1 contained in the settlement for age of diagnosis and
2 seasons played. They are entirely appropriate proxies
3 for causation and for exposure and are fully supported
4 by established medical and scientific science --
5 evidence.

6 Everyone in the medical and scientific
7 community, and in that regard I do mean everyone,
8 agrees that neurocognitive and neuromuscular decline
9 increases as one ages for reasons entirely dependent
10 of playing football. And it makes good sense to use
11 the amount of time played in the National Football
12 League as a proxy for alleged exposure to repetitive
13 concussive and sub-concussive events, which happens to
14 be the common allegation in all of these cases.

15 Finally the objection that the proposed
16 settlement imposes unfair administrative burdens on
17 retired players is particularly difficult to
18 understand. Again, Your Honor, we urge you to
19 consider the reality here.

20 This settlement requires retired
21 players to do no more than to secure a diagnosis of an
22 eligible compensable condition from a roster of
23 qualified independent doctors and to submit that
24 diagnosis with supporting documentation to the court-
25 appointed claims administrator. That's it. That's

1 all they're required to do. A retired player seeking
2 millions of dollars of monetary benefits can hardly be
3 heard to object to that process. And the NFL, which
4 has agreed to pay these substantial monetary awards
5 without any cap on its total liability, is surely
6 entitled to a claims process that is fair and that is
7 structured to be untainted by fraud and unaffected by
8 abuse.

9 I fully appreciate Your Honor that the
10 objectors and some of the retired players would like
11 this settlement to be even richer, even more generous
12 than it is, that is true as Your Honor who's
13 experienced well knows in every settlement on record.

14 And I appreciate that the retired
15 players and some of the objectors would like the
16 settlement to cover every physical and every
17 psychological condition under the sun, and I
18 appreciate that some retired players and some in media
19 have decided to blame professional football for a
20 broad, broad catalog of evils and frustrations.

21 Perhaps all of this is understandable,
22 perhaps it's not, but in the end however we ought not
23 lose sight of the fact that this Court is being asked
24 to evaluate a particular settlement, one that was
25 negotiated at arms length by the parties, one that was

later revised to take into account specific concerns raised by this Court and by Mr. Golkin.

No one in good faith can deny that the settlement pending before this Court provides substantial benefits and substantial other relief to retired NFL players or that it provides retired players with an outcome far, far superior to what they likely would achieve through a protracted and costly litigation against the NFL. More than 99 percent of the class members have already publicly acknowledged as much.

Viewed as it must be through the prism of this circuit's precedent we submit this settlement undeniably is fair, that it undeniably is reasonable, that it undeniably is adequate, and we urge its final approval.

But before I sit down, Your Honor, I would like to thank this Court for its extraordinary efforts superintending this very complicated MDL litigation and for closely supervising this settlement progress, and for allowing the parties to enlist retired Federal District Judge Lane Phillips as mediator and for involving Special Master Perry Golkin in these settlement efforts.

As you heard from Mr. Seeger and as you

1 yours know only too well, negotiating this settlement
2 was an extraordinarily challenging, complicated, and
3 daunting undertaking. This historic agreement would
4 not have been possible without the commitment,
5 dedication, patience, and judgment provided by Your
6 Honor throughout this process.

7 I thank you very much, Judge Brody.

8 THE COURT: All right. Thank you.
9 Okay. What we have decided to do is to take a ten-
10 minute recess, and then Mr. Molo, you will begin.

11 MR. MOLO: Yes, Your Honor.

12 THE COURT: Okay? And then we'll have
13 lunch when the judge gets hungry? No, when you
14 finish.

15 (Laughter)

16 THE COURT: Okay. Court is recessed
17 until 25 after 11:00.

18 (Recessed at 11:12 a.m.; reconvened at 11:22
19 a.m.)

20 THE CLERK: Be seated, everyone.

21 THE COURT: My goodness I've been a
22 judge for 33 years and I never had to use a gavel.

23 (Laughter)

24 THE COURT: Okay. You don't have to
25 stand. Once a day is enough. Thanks.

1 We'll wait a second, just wait until
2 everybody comes back in. There are a lot of people in
3 the courtroom.

4 (Pause)

5 THE COURT: Steven Molo; is that
6 correct?

7 MR. MOLO: That's correct, Judge.

8 THE COURT: Okay. You may begin.

9 MR. MOLO: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. MOLO: Thank you for --

12 THE COURT: It's still morning. Wow.

13 MR. MOLO: It's still morning. Thank
14 you --

15 THE COURT: Okay.

16 MR. MOLO: -- for giving me the
17 opportunity to address the Court and for the other
18 objectors to address the Court as well.

19 Since Mr. Karp got to introduce his
20 team I can't go back to New York without introducing
21 mine.

22 THE COURT: Okay.

23 MR. MOLO: So in addition to
24 Mr. Weigand and Mr. Totaro, who are over there to my
25 right, I have the skilled, abled Philadelphia,

1 Mr. Hangley with me at counsel table, and then seated
2 with me are Kaitlin O'Donnell, Eric Nitz, and Ray
3 Hashem from my office.

4 THE COURT: Okay. Thank you.

5 MR. MOLO: And Mr. Moore who is one of
6 the original objectors in the case and he happens to
7 be here as well.

8 Your Honor, I think -- I just want to
9 be absolutely clear up front, we want a settlement.
10 There's no question we want a settlement. I agree
11 with much of what was said by Mr. Karp and Mr. Seeger;
12 however, we want a settlement that is fair, adequate,
13 and reasonable. And the settlement that before the
14 Court today is not that.

15 I think it's important to understand
16 the settlement is a compromise, yes, but a compromise
17 of what? What were the nature of these very claims
18 here that are being put to rest as a result of this
19 settlement?

20 The allegations were fraud. Fraud of
21 the most serious kind. Not out of someone's -- the
22 plaintiffs weren't defrauded out of their money,
23 that's not what they alleged, they were alleging that
24 they were defrauded out of their health with all the
25 consequences that has not just to them but to their

1 families, to their girlfriends, to their wives, to all
2 those around them.

3 And yes, the plaintiffs face
4 significant obstacles and the settlement allows them
5 to avoid those risks, but the NFL avoids pretty
6 significant risks here too in this settlement. They
7 avoid the risk of having to pay billions of dollars in
8 damages, not just compensatory damages, but possibly
9 punitive damages.

10 They avoid the risk of having to go
11 through discovery. There's been no discovery in this
12 case. It's extraordinary that a settlement of this
13 nature would be reached without any discovery, and
14 there's been no disclosure by class counsel of any
15 informal discovery.

16 So the NFL avoids, if the allegations
17 that class counsel have put forth are to be true,
18 producing evidence that they in fact sponsor junk
19 science, that they affirmatively lied to their
20 players, all in the name of corporate profit.

21 The choice, contrary to what Mr. Karp
22 says, isn't just opt out if you don't like the
23 settlement, the choice is to have a settlement that is
24 legally sufficient or to opt out. And this Court is
25 well aware and has very carefully undertaken its duty

1 to be the safeguard of that class.

2 I'm going to address three primary
3 issues. I'm not going to address every issue that
4 Mr. Seeger raised, I'm not going address every issue
5 Mr. Karp raised. As Your Honor is well aware other
6 counsel will be speaking. I'm going to address the
7 issue that you directed me to first and foremost,
8 which is CTE, and how the release of the CTE claims,
9 while compensating only a small percentage of the CTE
10 cases in this case, renders the settlement in and of
11 itself unfair.

12 Secondly, I'm going to address
13 conflicts within the class, specifically with respect
14 to the treatment of CTE, and also with respect to the
15 treatment of players who played in the NFL Europe.

16 And third, I'm going to address the
17 deficient notice in this case.

18 Those issues all raise issues not just
19 of questions of the Federal Rules of Civil Procedure
20 but of constitutional magnitude.

21 Mr. Totaro is going address the issue
22 of defects and claims process, and Mr. Weigand will
23 address the problems with testing.

24 I think it's very helpful to start with
25 the legal framework on the issues that I raise,

1 because I don't disagree with most of the analysis
2 under the Girsh factors.

3 The first point on the legal factors --
4 if we could pull up the first slide, please, Josh.

5 THE COURT: Okay.

6 MR. MOLO: Okay. The law is clear that
7 denial of final approval is appropriate where a
8 settlement treats similarly situated class members
9 differently or where the settlement releases claims of
10 the parties who receive no compensation in the
11 settlement. It's Third Circuit law and it comes
12 straight from the manual for complex litigation.

13 Does the release -- is the release
14 justified, are parties in fact being compensated in
15 exchange for giving that release? And then what does
16 the release say here?

17 The release here -- if you would -- is
18 peculiarly both very broad and very specific. And I
19 have a stack here if this would be beneficial.

20 THE COURT: No, I can see it.

21 MR. MOLO: Okay.

22 THE COURT: It's okay. Thank you.

23 MR. MOLO: It's an unusual release in
24 that it's both broad and specific. As Your Honor can
25 see it says, "The class members waive and forever

1 discharge and hold harmless the released parties from
2 any and all past, present, and future claims," then it
3 talks generally about claims arising out of or
4 relating to brain or cognitive injury, but then
5 specifically -- specifically it says, "Arising out of
6 or relating to CTE."

7 So what is CTE and what is this disease
8 that this release applies to? Oddly enough we're
9 largely in agreement, the experts they submitted 11
10 affidavits I think it was a week ago, it might be more
11 than that from a host of people, I submitted
12 affidavits from 2 of the most prominent people in this
13 field, Dr. Stern and Dr. Gandy. Dr. Stern is at the
14 BU Center for CTE at Boston University Medical Center.
15 Dr. Gandy is at Mount Sinai.

16 And I want to add, Judge, both of those
17 doctors submitted those affidavits without any charge
18 because they feel so strongly about the wrongness of
19 this settlement. And before we're done today I would
20 appreciate it if the Court would require plaintiffs'
21 counsel and class counsel to disclose the financial
22 interests and arrangements between their experts, the
23 monies that was paid to their experts, as well as the
24 arrangements, there was one or two experts that said
25 we weren't paid, but their programs were funded by the

NFL.

What is CTE? If you look here at the brain it's a hideous, hideous disease. Up on top is a healthy brain, on the bottom we see a diseased brain with CTE. Just physically they look different. It's a progressive degenerative disease in people who have suffered repetitive brain trauma, and that's repetitive brain trauma whether you've received a concussion or whether it's sub-concussive.

And again, you see the agreement and the objectors between Dr. Gandy and class counsels' expert (indiscernible - 11:29:20) there was an agreement there between the class counsels' expert and the objectors' expert.

How does this CTE actually -- how does a brain come to look like that? There are actually specific definitive scientific methods for detecting it as we can see on the next slide.

If you look to the left, Judge, you'll see these little clusters and dots, and we can't see -- okay. Okay. And those little clusters and dots indicate what they call tau tangles. There is a protein called the tau protein, and when it forms in certain patterns in the brain that is in effect the symptom or a sign of CTE. That is CTE. If you look

1 to the right a healthy brain doesn't have those tau
2 tangles, to the left CTE does. And again, there's
3 agreement between the parties to that.

4 Now CTE has some very -- if you can go
5 to the next , please -- interesting things. In
6 contrast to Alzheimer, Parkinson --

7 THE COURT: No, no, may I have the --
8 let me have --

9 MR. MOLO: Sure.

10 THE COURT: -- what you -- what I --

11 MR. MOLO: Sure.

12 THE COURT: -- the first time said I
13 was not interested in seeing. It's difficult for me
14 to see it.

15 MR. MOLO: What's interesting about CTE
16 as it relates to this case, and it's interesting
17 because it relates to something that Mr. Karp said and
18 Mr. Seeger did as well, CTE requires repetitive head
19 trauma. In other words, you can't get CTE without
20 being hit in the head and repeatedly.

21 In contrast Alzheimer, Parkinson's,
22 ALS, and CTE all can be found in the general
23 population. And when they talk about well we can't
24 compensate mood disorders because -- or depression
25 because depression is found in the general population,

1 Alzheimer, Parkinson's, ALS are all found in the
2 general population, and unfortunately many of us here
3 know people who never played football who contracted
4 those diseases. And that's why it's been termed --
5 CTE has been termed in the popular presses the
6 industrial disease of football.

7 Now much has been made of the inability
8 to diagnose CTE only post-mortem, and that is true
9 that a definitive -- absolutely definitive diagnosis
10 of CTE only comes on an autopsy of a person's brain
11 and the research on a person's brain where those
12 microscopic slides are formed and then they're able to
13 analyze the tau proteins.

14 But, Judge, it's true also that there's
15 a great deal of imprecision about the diagnoses of
16 these other forms of neurological disease as well.

17 Alzheimer while people say so and so,
18 my aunt, my friend has Alzheimer, often it's not such
19 a definitive diagnosis. In those diagnoses frequently
20 most instances can't be definitively formed until the
21 person has unfortunately died and there's an
22 examination of their brain.

23 Now, I will say that the science today
24 to diagnose Alzheimer and Parkinson's and ALS in
25 people who are alive is farther advanced than it is in

1 CTE, but we are very, very close on CTE.

2 Within the next five to ten years, as
3 Dr. Stern has stated in his affidavit, there'll be
4 highly accurate, clinically accepted methods to
5 diagnose CTE to a great certainty. And obviously
6 Dr. Stern says that, but in addition class counsels'
7 own expert says this. This clinic that they have at
8 UCLA, which is doing these -- this research now, there
9 are players being told that they have CTE. And I'll
10 come to that in a moment.

11 So -- and there's an eye clinic in
12 Chicago. We cite all of this in our papers.

13 And contrary to what Mr. Karp says
14 about the science, Anchem clearly teaches -- Anchem
15 clearly teaches that you cannot freeze science in
16 place. A settlement has to account for the
17 development of science, especially when we're talking
18 about a situation like this.

19 Now one of the class -- the -- that's
20 the science of CTE in an overview.

21 I want to talk now about how CTE
22 actually manifests itself and the symptoms. What is
23 CTE to a person that has it? And it displays itself
24 in four stages, Judge. Can we go to the first stage?

25 Stage 1 CTE -- is it possible to get

1 that a little bit cleaner on the screen? Stage 1 CTE,
2 and Judge, this is on page 8 of the overall chart of
3 your -- of your book. But people at Stage 1 are
4 suffering from short-term memory difficulties,
5 executive dysfunction, loss of attention and
6 concentration, explosivity, and aggression. And, you
7 know, unfortunately we have seen these reports of
8 domestic abuse and domestic violence to the NFL, and
9 CTE is unquestionably a factor in that. It does not
10 excuse the behavior, I'm not suggesting for a moment
11 it does, but we would be all ignoring the science and
12 the most important people who are speaking on this
13 issue to say that having CTE and having a violent and
14 explosive and an aggressive personality and behavior
15 are unrelated.

16 In addition to that and what is
17 extraordinary is at its earliest stages, at Stage 1
18 CTE manifests, one of the symptoms is suicidality.
19 Suicidality.

20 And interestingly enough suicidality
21 does not present in Parkinson's, it does not present
22 in Alzheimer, it does not present in ALS, but
23 suicidality presents in CTE and at its very earliest
24 stages.

25 When you move to Stage 2 CTE, and it

1 does progress, and if you have CTE you will progress
2 for all four stages if you live long enough -- if you
3 live long enough, and many people don't.

4 At the second stage, in addition to the
5 things that I mentioned, the short-term memory loss,
6 again the explosivity and aggression, impulsivity and
7 mood swings develop, and again the suicidality is
8 present.

9 At Stage 3. At Stage 3 -- Stage 1 had
10 short-term memory loss and difficulty, Stage 2 short-
11 term memory loss. At Stage 3 we finally see memory
12 loss with mild dementia. At Stage 3 CTE. And at
13 Stage 3 --

14 THE COURT: How -- this is -- all comes
15 from this McKee (ph) report, is that what this --

16 MR. MOLO: This is from the McKee
17 report.

18 THE COURT: But how do they -- but what
19 was their evidence of that?

20 MR. MOLO: Well they are -- I mean
21 Dr. Stern and -- has put forth an affidavit they have
22 done, BU has put forth the most -- and this is not
23 controverted by the other side.

24 THE COURT: But now that you have CTE
25 only after death I don't quite understand how you can

1 come to conclusions about Stage 1, Stage 2, and
2 Stage 3. Are you asking families, is that what you're
3 doing?

4 MR. MOLO: They have gone back and
5 interviewed -- they have interviewed family members
6 and they have gone through and dealt with this, and
7 this is not just the people at BU, there's people at
8 UCLA and other people around the country that are
9 studying this.

10 THE COURT: Well right now you cite
11 McKee, but I read that -- I read -- is it a she? Yes.
12 I read her submissions -- her submissions of
13 scientific papers and it says that the only way they
14 know about this is that they asked family members.

15 MR. MOLO: Correct.

16 THE COURT: So family members are
17 making a decision about Stage 1, Stage 2, Stage 3?

18 MR. MOLO: No, family members are not,
19 Judge. The family members are providing information
20 to train scientists who do this very thing, and in
21 doing this very thing this is -- the study as to how
22 these symptoms display themselves, and it is only at
23 stage 4 that we see that CTE evolves to severe memory
24 loss with dementia, again, with the explosivity, the
25 aggression, suicidality, and paranoia.

1 I'm telling you that CTE is linked to
2 playing in the NFL and that CTE is the industrial
3 disease of the NFL, but I'm not the only person who is
4 before this Court who's told you that and who believes
5 that.

6 Let's start with where it appears in
7 the class complaint. They specifically allege:

8 "That for decades the NFL has been
9 aware of paragraph 89 that multiple blows to the head
10 can lead to long-term brain injury, including, but not
11 limited to, memory loss, dementia, depression, and CTE
12 and related symptoms."

13 That allegation was made by this cadre
14 of lawyers that Mr. Seeger talked about this morning,
15 these people who had settled billions of dollars of
16 claims, were the world's leading experts in bringing
17 claims on injuries like this, and after their studied
18 view of this case, after their great detailed study
19 and their analysis and their research they put their
20 names to a complaint in which this was the allegation
21 that was made. And you know what, they were right to
22 do so, because the science supports it.

23 If you go to the next slide we'll see
24 what BU did. You know, BU has the leading center on
25 the study of CTE, and in 2013 they published the study

1 in Brain Journal, which is the leading journal in
2 neurology, and in that study it showed that 34 of 35
3 deceased professional players were diagnosed with CTE,
4 and that slide says deceased professional players
5 because one of them happened to not play in the NFL,
6 he played in the Canadian Football League.

7 That research was recently updated, not
8 in a paper, but they've announced that research was
9 updated, and the 2014 research shows that 76 of 79
10 deceased NFL players have been diagnosed with CTE
11 post-mortem.

12 So again, the allegation that was made
13 linking CTE to the NFL is supported by the science.

14 Lastly, what has class counsel said
15 throughout this litigation up until just recently?
16 Mr. Seeger on his own website told the world:

17 "that multiple medical studies have
18 found direct correlation between football and
19 concussions and suffering from symptoms of chronic
20 traumatic encephalopathy, also known as CTE.

21 CTE is believed to be the most serious
22 and most harmful disease that results from the NFL on
23 concussions."

24 That was on his website until the day
25 after the argument in the Third Circuit when it raised

1 it at the Third Circuit, then it came down.

2 So for all of their experience, for all
3 of their research, for all of their work on the case
4 up until whatever it was, six weeks ago, eight weeks
5 ago, plaintiffs' counsel was telling the world that
6 CTE is believed to be the most serious and harmful
7 disease that results from the NFL and concussions.

8 So what does a player that is living
9 with CTE now after July 7th of 2014 get for having
10 CTE, the most serious and harmful disease? Gets zero.
11 Gets zero. Mr. Seeger's declaration at paragraph 37
12 says it, the NFL's brief at paragraph 78 -- at page 78
13 says it. CTE is not compensated in the living, it is
14 simply not compensated.

15 Now, I've heard about -- we heard a
16 little bit today and we've seen it in the papers that
17 they said, well really it's not CTE, even though we're
18 compensating Parkinson's, ALS, Alzheimer because those
19 are diseases that are more readily, not to 100 percent
20 certainty necessarily, but more readily diagnosable
21 right now ARE people that are living we're going to
22 give them actual cash awards. But the CTE people are
23 really sort of taken care of any way. And let's see
24 how that works out.

25 Well the compensation that they're

1 referring to, death with CTE before July 7th of 2014,
2 which they valued with a maximum award of \$4 million,
3 so they're saying that CTE has a value, as they
4 should, but if you were diagnosed with CTE at Stage 1,
5 Stage 2, Stage 3, or Stage 4 you could get up to a
6 \$4 million award for any of those stages.

7 Now this sort of sloppy after the fact
8 argument to sort of apologizing and address the very
9 obvious issue that CTE is not compensated, they say,
10 well really they're compensated with CTE through
11 dementia. But how would that occur? Well you could
12 have CTE at Stage 1 or 2 and not have dementia, and in
13 that case you die with it, it could be diagnosed in
14 your brain, just like the people who died before
15 July 7th of 2014 have that same definitive post-mortem
16 diagnosis and they get nothing. They get nothing.
17 But if you have Stage 3 or 4 and you might -- and you
18 die also by the way just the after fact diagnosis
19 you're not going to get anything even though it's
20 definitive.

21 But the argument that's being made is
22 that the way that CTE victims get somehow compensated
23 through this settlement is that they get to go through
24 the claims process, which we're going to talk about
25 the problems with that in a moment, have that

1 uncertainty of the claims process, and then -- and
2 then if after going through the claims process there
3 is a determination -- and I'm not even going to call
4 it a diagnosis -- but a determination of dementia 1.5,
5 because it's not really in the medical literature,
6 something called dementia 1.5, they could get a
7 maximum award of up to 1.5 million. And similarly if
8 you get a diagnose or a determination of dementia at
9 2.0 you could get up to a \$3 million award.

10 So compensation for dementia simply
11 does not equal compensation for CTE.

12 Now there was a statement made by
13 Mr. Klonoff, one of the affiants at paragraph 86 where
14 he makes what I consider to be quite a remarkable
15 statement and one that has been muddled around in the
16 press and has come -- been attributed to various
17 people on the plaintiffs' side of this case, is the
18 reason we didn't provide a benefit for CTE in people
19 after July 7th of 2014 is that would somehow
20 incentivize people to commit suicide.

21 Well if you were really interested in
22 addressing suicidality among players who were the
23 victims of this disease that you class counsel had
24 researched with all of your resources and experience
25 and have alleged in the complaint and proclaimed to

1 the world and in website, why didn't you do something,
2 why didn't you build something into the settlement
3 that would deal with the issue of suicide when people
4 were suffering from CTE at Stage 1 or 2, not the
5 mention 3 or 4?

6 I mean I believe that that statement
7 and that argument is an insult, it's an absolute
8 insult to the memory of the players who have taken
9 their lives and who under the scheme of this
10 settlement would never have been compensated or their
11 families would not be compensated, even though they're
12 suffering from this hideous disease.

13 Now the CTE sets up in a different way
14 in addition to just that alone the inadequacy and the
15 failure to compensate CTE is enough to find this
16 settlement unfair and inadequate.

17 Additionally, Judge, there are
18 intraclass conflicts, and again, we're not just
19 talking about leaving out a disease, we're not talking
20 about line drawing, we're talking about the disease
21 that is most central and the one that is only
22 exclusively obtained through contact in the head being
23 left out of the settlement. There's a release without
24 compensation for those people, but they did provide
25 some compensation, there is some CTE compensation, and

1 that CTE compensation is for people who died with CTE
2 before July 7th of 2014. As I said, the award that
3 those people may get would be up to -- up to
4 \$4 million.

5 The issue here is are the class
6 representatives -- the Third Circuit deals with the
7 this issue, which is really under Rule 23(a)(4) about
8 adequacy of representation, intraclass conflicts
9 within Third Circuit law is addressed through the
10 issue of adequacy of representations.

11 The class representatives failed to
12 fairly and adequately represent the interest of the
13 class, and the adequacy requirement here, the lynchpin
14 of the adequacy requirement is the alignment of the
15 interests and the incentives between the
16 representative plaintiffs and the class. The
17 alignment of the interests and the incentives between
18 the representative interests of the class, the rest of
19 the class.

20 What did the -- what did the class
21 members here allege? The representative class members
22 do not allege -- and I believe it's paragraph 4 for
23 Mr. Wooden and paragraph 7 for Mr. Turner -- they do
24 not allege they have or at risk of having CTE, they do
25 not allege that they played football in the NFL

1 Europe, which is excluded and I'll come to in one
2 second, and they do not allege that they were subject
3 to the TBI, traumatic brain injury, and stroke set
4 offs. And the rights of people who do have CTE and
5 the rights of the people who have played in the NFL
6 Europe and the rights of the people who have TBI and
7 stroke set offs those rights were bargained away. And
8 it makes sense, because class counsel -- I mean the
9 class representatives do not allege that they are
10 subject to any of those things.

11 As I said, the intraclass conflict.
12 The CTE issue presents itself as an intraclass
13 conflict as well. We have the \$4 million award for
14 those who die with CTE or died with CTE, Stages 1
15 through 4, any of those stages -- any of those stages,
16 death with a diagnosis of Stages 1 through 4 qualified
17 someone for a payment of up to \$4 million, whereas,
18 death with CTE at Stages 1 through 4 on or after
19 July 7th, 2014 results this zero.

20 Let's assume for a moment that you
21 can't diagnose people -- let's assume for a moment
22 that you can't diagnose people with CTE while they're
23 living. There's no justification for not providing
24 that same CTE benefit with that same diagnosis for
25 people who die after July 7th of 2014. None. And

1 none has been offered. The closest they've come is
2 this outrageous statement by Klonoff about this was in
3 concern for people not inducing suicidality or
4 inducing suicide.

5 In addition to the intraclass conflict
6 there's a conflict with the players who play in the
7 NFL Europe who receive no compensation or no credit I
8 should say for the years that are played.

9 As Your Honor is aware the settlement
10 is set up with a grid where if you play a certain
11 amount of time you get a certain award.

12 Now the NFL Europe was a league that
13 was actually operated and owned by the NFL from 1991
14 to 1992 and 1995 to 2007. All of the people in NFL
15 Europe are included in the class and all of them
16 provide a release.

17 The NFL Europe had essentially the same
18 rules, there were very, very minor rule differences.
19 They played with the same equipment. And you know
20 what else? They played with the same players. They
21 played with the same players. Mr. Morey in his
22 affidavit says that he played 1 year 30 games between
23 the --

24 THE COURT: Well he's opted out hasn't
25 he?

1 MR. MOLO: He has opted out.

2 THE COURT: Then you can't cite him.

3 MR. MOLO: But there are other -- the
4 evidence is of the record that he played 30 games, and
5 Mr. -- there's another affidavit by Mr. Heimbürger,
6 who has not opted out.

7 THE COURT: Okay.

8 MR. MOLO: And players played in both
9 the NFL Europe and they played in the NFL in the
10 United States. And at one point in the meeting
11 Mr. Seeger was saying, well, maybe they didn't hit as
12 hard in Europe. I don't -- I don't think that that
13 can seriously be contended. These are the same
14 players that played in the NFL. These are NFL
15 players.

16 They also say, well, you know, the NFL
17 Europe was really a developmental league so that's not
18 really entitled. Forget about the fact that someone
19 who may go on and play on a Super Bowl team or play on
20 a Super Bowl team that year may go over and play in
21 the NFL Europe, they're saying it's really a
22 developmental league.

23 Well let's see how they treat those
24 people. So to be eligible for an award if you played
25 in the NFL, if you played three or more games on an

1 active rooster that counted as one eligible season
2 under the award. And if you've played eight or if you
3 served ought or more games on a developmental squad
4 you were eligible for .5 seasons.

5 So the fact that the NFL season was 16
6 games or 14 games or 140 games didn't matter because
7 you qualify with 3. And the NFL Europe game -- season
8 was 10 games. So a player could play three games very
9 easily in the NFL Europe. And to the extent that they
10 claim it's a developmental squad there's no
11 justification for dividing out these players from the
12 NFL Europe. And again, those players from the NFL
13 Europe give the same release as everyone else.

14 Now again, you don't have to
15 necessarily take my word for it, Mr. Klonoff here who
16 I criticized a moment ago I think is brilliant in this
17 assessment where he says that class counsel -- he
18 discussed this issue of excluding the players from NFL
19 Europe from credit and he says:

20 "I believe as well that the parties
21 should consider modifications to the settlement
22 agreement to address the NFL Europe issue.

23 It is my belief that the parties should
24 consider modifications to the settlement to address
25 this issue."

1 And that's the Cludoff declaration at
2 paragraph 16 and 93.

3 And we raise other issues concerning
4 the offsets for non-NFL traumatic brain injury in our
5 objection, I'm not going address those, but what I am
6 going talk about next is the question of notice.

7 I've heard about today, this morning
8 this historic settlement that over 20,000 players
9 endorse this agreement. No such thing. There's no
10 such endorsement. There are not players all standing
11 up here saying that we are fully behind this. And,
12 you know, it's not surprising why that's the case that
13 we have not seen a relatively low number of objectors.
14 By the way, this number of objectors and these
15 percentages of objectors is not all that low. It's in
16 fact greater than the number of opt outs and objectors
17 in the GM Trucks case in which the Third Circuit
18 reversed due to inadequate representation. And the
19 issue is whether or not the objections raised fairly
20 questioned the fairness, adequacy, and reasonableness
21 of the settlement.

22 So let's consider what we heard about,
23 all this notice that was given. The long-form notice,
24 the short-form notice, the website.

25 The website statistics are striking.

1 Mr. Seeger cited some terrific numbers that he gave
2 you about how many people visited the website. But if
3 you go and read the declaration of the person that
4 managed that for him, 78 percent of the 65,000 people
5 who visited the website looked only at the first page,
6 the average viewer looked at the website for a minute
7 or less. That is in the declaration of Mr. Brown,
8 which is attachment 7.

9 The -- and what did they see once they
10 got there? What they saw on the home page of the
11 website was essentially the short-form notice, and the
12 short-form notice was displayed or published in other
13 places as well.

14 But what did the short-form notice say?
15 It said that players -- if they were looking at what
16 their benefit would be that they would receive as part
17 of this settlement, which would -- I think would be
18 the thing that people would look to -- what are the
19 monetary awards, that middle bullet point, it said:

20 "Awards for diagnosis of ALS, Lou
21 Gehrig's disease, Alzheimer disease, Parkinson's,
22 dementia, and certain cases of traumatic -- chronic
23 traumatic encephalopathy or CTE, a neuropathological
24 finding, diagnosed after death."

25 That's what the short-form notice says.

1 It doesn't say diagnosed after death if you died
2 before July 7th of 2014.

3 And a player could very reasonably
4 conclude that this notice, as well as the website, if
5 they went and visited the website, said, you know
6 what, this may not be a good deal, it may not be the
7 deal I want, but at least I know I'm safe and my
8 family is safe because I'm going to get a CTE benefit
9 after I die. And it's a very reasonable conclusion
10 for a player to draw.

11 And then when you go to the long-form
12 notice, which was this slickly magazined packaged up
13 23-page magazine that they published and -- or sent
14 out, that's also false and misleading.

15 When you look to the long-form notice
16 at Section 14, again, what would be the diagnosis that
17 people would look to first and -- what would they look
18 to first and foremost? What diagnosis qualified for
19 monetary awards? Of course this happened to be by the
20 way the centerfold. When you open this up this is on
21 centerfold of -- it's not a centerfold like that, it's
22 a centerfold when you open the pages, and it says that
23 "Monetary awards are available for the diagnosis of
24 ALS, Parkinson's, Alzheimer, Level 1 neurocognitive
25 impairment, early dementia, or death with CTE." And

1 then they take death with CTE, along with those
2 others, and they give it a defined term, they call it
3 a qualifying diagnosis. And then it says, "A
4 qualifying diagnosis may occur at any time until the
5 end of a 65-year term of the monetary award fund."

6 Well that's certainly not true if in fact death with
7 CTE before July 7th of 2014 is what gets you an award.

8 So again, a player reading the long-
9 form notice would be misled.

10 And I can go through more of these, but
11 if you take it they use the same point again
12 throughout where they talk about qualifying diagnosis.
13 And if you look at that again qualifying diagnosis and
14 death with CTE diagnosed after death, \$4 million.

15 Now, yes, there is mention at one point
16 about July 7th of 2014, it's -- they say it's
17 mentioned three times. Twice it's in defining the
18 class representatives in the subclassing, and there's
19 no mention of you have to get -- you have to die
20 before July 7th of 2014 to get the benefit. And the
21 one disclosure that is made is distinct from these
22 others and is distinct from the tremendous impression
23 that's created throughout this.

24 So we see that, you know, the long-form
25 notice itself was misleading.

1 And, you know, we cited some cases in
2 our brief that went beyond class certification or in
3 class notice issues that looked to other areas of the
4 law, and I thought it was informative.

5 You know, if we're going to require
6 accuracy for somebody to make a claim for their, you
7 know, an insurance policy on a class action where the
8 insurance policy was inaccurate or they're making a
9 claim, a consumer fraud claim for some product that's
10 returned, I mean we hold that to a stringer standard
11 than we're going to hold a situation where -- the
12 parties in a situation where the stakes are someone's
13 life and someone's health? That just is not right.

14 So the total mix here is completely
15 irrelevant, and they're completely disingenuous,
16 dishonest, misleading statements that are made.

17 Now the settlement notice became worse
18 by what happened after it went out. As we said, and
19 I'm not going to go through all of this, but class
20 counsel undertook a very vigorous media campaign. I
21 thought it was kind of funny to hear Mr. Karp talk
22 about the powerful journalists. All one has to do is
23 turn on a television set between August and February
24 and the NFL seems to be on virtually every night of
25 the week where people are talking about the NFL.

1 There's no more powerful media agent in the United
2 States than the NFL.

3 But Mr. Seeger went out and started
4 selling the deal to players, and this was an interview
5 that he gave to Sporting News. He's telling:

6 "CTE is not a relevant marker for
7 anything in the settlement, it's the symptoms. If you
8 have all the symptoms that are related to CTE or the
9 diseases that are related like dementia and Alzheimer
10 and ALS, then that determines it.

11 If a player thinks he has any symptoms
12 of it that's the reason to stay in the deal."

13 If a player thinks he has any symptoms
14 of it that's the reason to stay in the deal. But we
15 know that many of the symptoms of CTE, including some
16 of the most serious symptoms of CTE, not just for the
17 players but for their wives, girlfriends, and those
18 around them, are not in any way compensated under this
19 settlement.

20 Now you might think, boy, Mr. Molo this
21 is all sort of fanciful thinking and you've threaded
22 together this argument and it all flows very nicely to
23 meet your point, but no player really would do that.
24 Well that's -- that would be wrong if you were to
25 think that or if someone were to argue that, and I can

1 show you why. Because if you look at an objection
2 that was filed by a player by the name of Eric
3 Williams, and it's moving, and I've read these
4 objections and I've read the letters, like the letter
5 from the mother who lost her son to CTE who played
6 football, Mr. Williams' objection set forth to this
7 Court and it's filed says first of all when he's
8 describing his situation says, "Diagnosed with CTE at
9 UCLA subject NFL form." Diagnosed with CTE.

10 Now maybe technically under the legal
11 definition of a diagnosis or maybe under the issue of
12 -- under the scrutiny of diagnosis to the finest and
13 final degree of medical certainty he didn't have CTE
14 because it only can be diagnosed post-mortem, but he
15 was told, or at least he believes he was told, that he
16 was diagnosed with CTE at UCLA. Probably by these
17 very people who were affiants for the class counsel.

18 And then what does he say? He says
19 that, "Players diagnosed with CTE and living today
20 have to kill themselves or die for their family to
21 ever benefit, for their family to ever benefit. In my
22 case, based upon all my other reports, there's an
23 overwhelming chance my family had a lifetime of
24 medical bills, including long-term care on its
25 horizon. But the only time the family can get relief

1 is after I'm dead."

2 If he wrote you this letter, that's
3 simply not the case. I mean, the only time someone
4 would get a benefit for CTE is had they died before
5 July 7th of 2014.

6 So it's not a question of me getting up
7 here and saying, you know, this notice is inadequate
8 and they left out a word here and a player looking at
9 this would logically -- would logically believe that
10 CTE is covered. This is evidence that a player does
11 believe it and I'm certain, Judge, that there are
12 many, many more out there like him.

13 I would like to know whether class
14 counsel, any of them, all of them with all of their
15 experience got on the phone, the minute they read this
16 objection and said, Mr. Williams, we want you to
17 understand you're incorrect. You're misinformed.
18 Even though we're your fiduciary, we're your guardian
19 and we want you to know that you've been misinformed.
20 Your family doesn't get any benefit. Maybe we could
21 hear about that this afternoon, that phone call and
22 how it went.

23 Now, Judge, this was a deal that was
24 negotiated without any discovery. It contains a clear
25 sailing provision that calls for up to \$112 million

1 fee award, \$112 million fee award without --

2 THE COURT: Well, that --

3 MR. MOLO: -- any discovery.

4 THE COURT: -- that comes after.

5 That's not --

6 MR. MOLO: It does after, Judge, but

7 it's part of the settlement agreement that you're

8 going to --

9 THE COURT: Well, that --

10 MR. MOLO: -- prove.

11 THE COURT: No. That wasn't what it
12 said. It said they -- that the NFL would not object

13 --

14 MR. MOLO: Correct.

15 THE COURT: -- which is a very

16 different --

17 MR. MOLO: I agree.

18 THE COURT: I decide this.

19 MR. MOLO: I agree. We agree. It's
20 what they call in a literature, I guess, a clear,
21 sailing agreement. The -- part of the settlement
22 agreement says the NFL would not object. I understand
23 it's still within the Court's discretion to make the
24 award that it's going to make, but up to \$112 million
25 to have someone say that, I'll agree to pay you up to

1 \$112 million, subject to the Court's discretion, and
2 not compensate the core disease, the core injury to
3 the class. It's a -- we've got all this experience.
4 We've negotiated billions of dollars of claims. Well,
5 how -- you know, they -- what difference does that
6 make. These are injured people who are going without
7 compensation, and they have a fiduciary duty to them.

8 I know, too, that by the way they get
9 paid under that agreement within 60 days and the --
10 these class members are left to struggle through the
11 system for however long it takes. I'll talk about
12 some of the difficulties with that in a moment.

13 So I understand the decision before the
14 Court today is up or down, either to approve the
15 settlement as fair, adequate and reasonable and fully
16 compliant with Rule 23, including Rule 23(a)(4), or to
17 say, no --

18 THE COURT: You don't think I have any
19 discretion to adjust it?

20 MR. MOLO: I agree.

21 THE COURT: You -- is that -- do you
22 think I don't?

23 MR. MOLO: I think -- no. I think that
24 your decision today is to approve the settlement or to
25 reject the settlement. But in rejecting the

1 settlement --

2 THE COURT: Well, I mean, if there's --
3 if I -- in other words I can't make any adjustments to
4 that -- to this settlement that I think is are -- they
5 are reasonable and adequate in order to make it an
6 agreement --

7 MR. MOLO: Correct.

8 THE COURT: -- that we can --

9 MR. MOLO: But I believe that the Court
10 can exercise extraordinary influence in seeing that
11 the parties do incorporate some things.

12 And what might those be, if I may,
13 because, again, we want to see a settlement. I want
14 to make no mistake about that. Just, these would be
15 some things, some things that would go toward just
16 making it at least closer to fair, reasonable and
17 adequate.

18 Simply on the notice issue, notice has
19 to be done in a way where it's clear, consistent, and
20 accurate language. On the question of the NFL Europe,
21 you've got to give credit for those players. Those
22 are things that can be done quite simply.

23 With respect to the non-NFL induced
24 traumatic brain injury or stroke and those offsets,
25 those should be reduced to a reasonable number where

1 there's an evidence-based percentage. There's no real
2 evidentiary based percentage for those then.

3 And then for this core issue, Judge, on
4 CTE, what can be done? Well, the settlement can
5 include compensation for CTE after death of July 7th
6 of 2014. So taking away the issue of whether or not
7 CTE can be diagnosed in someone that's living, this
8 benefit can be extended to anyone who dies with CTE
9 and has a diagnosis of CTE after they die. And just
10 like the people who had that benefit if the player
11 died before July 7th of 2014.

12 Another thing that could be done is to
13 include compensation for CTE while people are living
14 once more reliable scientific tests are done, or at
15 least making an effort to address those issues now
16 while the science catches up knowing what the symptoms
17 are.

18 And then also to treat all symptoms of
19 CTE, Stages 1 through 4. As we've seen, assuming that
20 you buy the argument that CTE's really -- the symptoms
21 of CTE are really treated through the dementia,
22 they're not. There's no question, and you will hear
23 from lawyers today who represent players who did not
24 demonstrate the symptoms of Stages 3 and 4, and those
25 players displayed extraordinary symptoms. Their lives

1 devolved and fell apart. And in stages -- with Stages
2 1 and 2, and it ultimately resulted, unfortunately,
3 very, very sadly in suicide. And that happened with
4 several prominent players.

5 So something must be done for that.
6 And the alternative to that is to go back to what the
7 bargain is and say, well, then, if you're not going to
8 do those things, if you're not going to compensate the
9 core disease, the one that only -- is the only disease
10 that's at issue here that results from playing
11 football and not one that's found in the general
12 population, then eliminate the CTE release. Don't let
13 the benefit -- the NFL have that benefit. They're not
14 entitled to it. They're providing no compensation for
15 it and they say as much.

16 This is not a fair, adequate and
17 reasonable settlement, Judge, and I can't tell you how
18 much gratitude my clients feel and many other players
19 who have contacted me and feel for allowing me the
20 opportunity to come here and raise these concerns
21 because they have lived through hell, the misery that
22 they have experienced with their families, with their
23 sons and daughters, with their wives and girlfriends.
24 We've seen these domestic abuse issues that have been
25 all over the media. This is an insidious disease and

1 it deserves compensation, and it frankly deserve
2 affirmative action in people doing something to treat
3 it, not cover it up.

4 The motion for final approval should be
5 rejected. The matter should be remanded. If the
6 parties want to negotiate, there should be adequate
7 representation for those whose rights were bargained
8 away already in this first settlement. And then
9 hopefully, hopefully we'll get a settlement when it's
10 fair, adequate and reasonable and, frankly, worthy of
11 these people who have been subjected to a terrible,
12 terrible wrong.

13 Thank you.

14 THE COURT: Thank you.

15 Okay. We have some lawyers from your
16 firm who are going to say a few words.

17 MR. MOLO: Yes.

18 THE COURT: Okay. I think that the
19 first person is --

20 MR. MOLO: Mr. Totaro.

21 THE COURT: -- Mr. Totaro who has ten
22 minutes.

23 MR. TOTARO: Thank you, Your Honor.

24 Martin Totaro of Mololamken. I would
25 like to spend a few minutes discussing the various

1 procedural flaws in the various claims provisions that
2 render the settlement unfair. I will briefly address
3 three categories of flaws. First --

4 THE COURT: Before -- can -- before
5 that, and I just noticed this from my list here, did
6 you -- who objected, who -- one of your clients that
7 didn't opt out? Mori (ph) -- is it Manny Morey, yeah,
8 Morey opted out.

9 MR. TOTARO: Allan Faneca would be one
10 example of someone --

11 THE COURT: And this -- that person
12 made an objection?

13 MR. TOTARO: I -- yes. Our objection
14 was filed on behalf --

15 THE COURT: Oh, okay. Your object --

16 MR. TOTARO: -- of all seven.

17 THE COURT: Okay. That's fine.

18 MR. TOTARO: Some opted out, some
19 didn't.

20 THE COURT: Thank you.

21 MR. TOTARO: Thank you, Your Honor.

22 So the first deficiency I wanted to
23 raise was the fact that the settlement is opt-in, not
24 opt-out, second, deficiencies in the baseline
25 assessment program; and, third, deficiencies in how

1 players with qualifying diagnoses actually receive
2 awards. So I would like to start out with a slide
3 that provides an overview of what I'm talking about.
4 I think it's up.

5 Thank you.

6 So, Your Honor, this is an opt-in
7 settlement. A class member does not have an automatic
8 right to receive benefits from the settlement. The
9 class member must instead opt-in to this settlement by
10 registering with the claims administrator within six
11 months or forever be barred for receiving any
12 compensation regardless of whether the person would
13 otherwise merit compensation.

14 Now the settling parties come back and
15 say, well, precedent doesn't unilaterally bar
16 registration requirements in every case. But the
17 settling parties cite no case where the courts have
18 allowed this opt-in procedure where the class injuries
19 themselves could cause the injury that allows -- that
20 causes the player to miss the deadline.

21 And more fundamentally, Your Honor, the
22 settling parties provide no reason why you would have
23 an opt-in requirement. There's simply no need for an
24 opt-in requirement. If you are a class member and you
25 are entitled to compensation, then you should receive

1 compensation. In other words, everyone who is a class
2 member should automatically be registered. There
3 should be no opt-in requirement.

4 Moving to the second issue on the
5 slide, deficiencies in the baseline assessment
6 program. If we could put up the next slide.

7 So the settling parties have said over
8 and over that the settlement is uncapped. That simply
9 is not true. The baseline assessment program is very
10 much capped at \$75 million and that cap moreover, as
11 we point out in our papers, is based on several
12 unrealistic assumptions, including the cost of
13 treating members of the class who have dementia who
14 don't qualify for an award.

15 Now the settling parties' response here
16 I think is very telling to the way this case has been
17 handled by the settling parties. They say that their
18 actuaries estimate that the \$75 million should be more
19 than enough. If that is true, Your Honor, then there
20 is no need for a cap. And if it's not true, then the
21 cap should be lifted because class members with
22 dementia who do not qualify for an award can receive
23 benefits under the settlement.

24 Now Mr. Seeger said something here
25 today that I think is -- is worth mentioning. When he

1 was discussing participation in the baseline
2 assessment program he said, "We're hoping all of the
3 players participate." That came as quite a surprise
4 to me. Class counsel's own expert estimates that only
5 a little over half the players will participate,
6 11,886, and that's on paragraph 23 of the Vasquez
7 declaration. If Mr. Seeger is actually hoping that
8 all the players will participate and all the players
9 actually do participate, that cap will far fall
10 woefully short.

11 The baseline assessment program also
12 doesn't address mood and behavioral symptoms, so it
13 will add nothing to the many players who are suffering
14 from those symptoms. As Mr. Molo explained
15 previously, if CTE is to receive compensation, then
16 mood and behavioral symptoms should also be covered
17 under the baseline assessment program.

18 The baseline assessment program's
19 supplemental benefits were supposed to provide
20 meaningful medical and counseling benefits. A capped
21 time-limited fund simply does not do that.

22 If I could go to the third topic I will
23 speak about, deficiencies in how players with
24 qualifying diagnoses actually receive awards. The
25 next slide. Thank you.

1 So even if a class member has opted
2 into the settlement, even if a class member has
3 participated in the baseline assessment program and
4 met that deadline, that class member would still face
5 several hurdles before he can recover on even a valid
6 claim.

7 A qualifying diagnosis can only come
8 from what's called under the settlement a MAF
9 physician, and that just means a monetary award fund
10 physician. And that person has to be approved by the
11 NFL, and the player has to pay for the visit and the
12 examination.

13 Now the settling parties come back and
14 say, well, we actually need our own physicians, these
15 MAF physicians to protect against fraud. But, Your
16 Honor, that cuts in our favor. If these physicians
17 are put in place to protect against fraud, then other
18 hurdles faced by class members before recovery are
19 totally unnecessary. Why would there be a complicated
20 claims package that must be submitted even after
21 you've received a qualifying diagnosis from an NFL-
22 approved doctor.

23 Why does the NFL get to appeal a
24 decision where its own doctor that it picked decided
25 that a class member deserves an award. These burdens

1 simply make no sense if, as the NFL and class counsel
2 suggests, their own physicians are already policing
3 against fraud.

4 And it's also going to be very
5 difficult to actually find these physicians and put
6 them into the -- into place. The country, large parts
7 of the country are facing a nationwide shortage in
8 qualified neurologists. And there's no guarantee in
9 the settlement that a class member will be within X or
10 Y number of miles of one of these physicians who can
11 actually diagnose them with a qualifying disease.

12 And I would also note that the NFL
13 agrees that a "qualified neurologist" under the
14 settlement may make a qualifying diagnosis for a
15 player before the settlement would get approved. That
16 should be all that's required for after certification
17 as well. At a minimum that should be all that's
18 required if there's a player in a rural area, for
19 example, who is not close to a MAF physician.

20 I would also like to note, Your Honor,
21 that even after a player receives a diagnosis from an
22 NFL picked doctor, he still faces many hurdles before
23 actually recovering. He must submit a claim package
24 within two years of receiving a qualifying diagnosis.
25 And I think most absurdly for me, that player has to

1 submit some sort of proof that he actually played in
2 the NFL. And a player who fails to do so receives an
3 80 percent offset in any award.

4 Now the settling parties say that,
5 well, the NFL has a duty under the settlement
6 agreement to provide evidence in "good faith" if the
7 player's application is insufficient to demonstrate
8 that the player did play in the NFL. But with all due
9 candor, Your Honor, we don't want to good faith
10 standard. We don't want to give the NFL discretion.
11 We want clear, bright-lined rules that allow recovery
12 where recovery is due.

13 My final point, Your Honor, is that the
14 appeal process is very much asymmetrical. A class
15 member has to pay a \$1,000 award for an appeal to this
16 Court, but the NFL pays nothing. That's simply a fee-
17 shifting provision. There's also no hardship
18 provision for any NFL player to appeal if the player
19 has become poor. And as we note on Footnote 89 of our
20 brief, that's unfortunately a common result after
21 playing in the NFL.

22 A player also has to satisfy a clear
23 and convincing evidence standard and must do so within
24 five pages, and under settlement Section 9.7 they
25 don't even get to file a reply. I know there have

1 been a lot of pages filed in this case. Some people
2 might think there's been too many, but five pages to
3 satisfy a clear and convincing evidence standard seems
4 to me to be an unfairly high limit imposed on these
5 players.

6 Now what did the settling parties
7 respond? Well, they say that the \$1,000 fee is meant
8 to "discourage baseless appeals," but there's no fee
9 limit or limit on the number of appeals that the NFL
10 can take. And the NFL, moreover, has little incentive
11 not to appeal and prolong the process. Here again,
12 the only limit on the number of NFL appeals is that
13 they must be in good faith.

14 But I would also like to note one
15 peculiarity about this settlement. Section 9.6(b)
16 doesn't even allow the appellant, the player, the
17 class member, to challenge whether the NFL is acting
18 in good faith. Instead, curiously, that job falls on
19 class counsel, not the actual player whose -- whose
20 been affected.

21 And so like Mr. Molo, I would like to
22 put up a slide that suggests how this settlement might
23 be a little better. So you could lift the cap on the
24 BAP, the \$75 million cap; that if Mr. Seeger is
25 correct, if all the players participate, it wouldn't

1 come close to covering all the benefits that the
2 baseline assessment program is supposed to provide.

3 Another simple fix would be to extend
4 the baseline assessment program to the full term of
5 the settlement instead of having it ten years with the
6 possible enhancement of five more years at the -- on
7 the outside.

8 You could also eliminate the
9 unnecessary opt-in requirement hurdle.

10 You could, Your Honor, make it easier
11 to get a qualifying diagnosis by eliminating the MAF
12 physician requirement, at least where these physicians
13 aren't close to any class member.

14 And then, finally, you could even up
15 the appeal process to make it symmetrical.

16 Your Honor, I'm happy to answer any
17 questions you might have, but otherwise that's it.

18 THE COURT: Okay. Thank you.

19 MR. TOTARO: Thank you for giving me
20 the opportunity to speak.

21 THE COURT: Okay. Mr. Demetrio.

22 MR. MOLO: Actually, Mr. -- Mr.
23 Wiegand, I believe, Judge.

24 THE COURT: Oh, it says on the list
25 here that I've sent out --

1 MR. MOLO: You had -- you turned it
2 around the other way, I think. You said you wanted to
3 hear from all the Mololamken lawyers' first?

4 THE COURT: Well, I thought that --

5 MR. MOLO: However -- however you want
6 to proceed. If you don't mind, his short and Mr.
7 Demetrio's is longer.

8 THE COURT: Well, it doesn't make a
9 difference. I'm going to hear both of them before
10 lunch. If you want to go --

11 MR. MOLO: Go ahead.

12 THE COURT: -- Mr., -- I'm not going to
13 -- that's not -- that's irrelevant. You can go for
14 five minutes.

15 MR. MOLO: Thank you, Judge.

16 THE COURT: Okay. Mr. Wiegand.

17 MR. WIEGAND: Thank you, Your Honor,
18 and good afternoon.

19 THE COURT: Good afternoon.

20 MR. WIEGAND: Tom Wiegand of
21 Mololamken.

22 Your Honor, the problems with the test
23 battery are not limited to the fact that it does not
24 cover CTE or its symptoms. I am going to address the
25 problem with the testing procedures used in the

1 baseline assessment program being arbitrary and not
2 scientifically accepted.

3 Now the categories of dementia that are
4 created in the settlement, Levels 1.0, 1.5 and 2.0,
5 neurocognitive impairment is how they've been titled,
6 are determined through a testing procedure that is set
7 forth in Exhibit 2 to the proposed settlement.

8 I have highlighted on the screen the
9 five areas that are put into the determination of
10 neurocognitive impairment under this proposed test
11 procedure. You'll see under each of those highlighted
12 areas there are specific subtests. So for the first
13 one, complex attention, there are six subtests. The
14 point that the settling parties have made is that
15 these tests are commonly used, known and accepted.

16 Those six subtests, each on its own, is
17 that. It is known, used and accepted. When you
18 combine this page of various subtests in these five
19 domains, that is new. In fact, they combine them in
20 ways that depending on how one tests in different of
21 the subtests that you will be determined either as
22 1.0, 1.5 or 2.0 level dementia.

23 Your Honor, if you were to Google, as I
24 did, Level 1.5 dementia, you will find references to
25 the NFL concussion settlement. It is nowhere else in

1 the scientific or medical literature.

2 THE COURT: But they do talk about mild
3 dementia. All the papers that I read that were
4 submitted to me refer to mild dementia.

5 MR. WIEGAND: The -- and this is not a
6 known or accepted test for mild dementia. That is --
7 how neurologists and neuropsychologists determine that
8 is not what we are seeing. So the requirements that
9 are being set forth here, we -- we don't dispute that
10 test batteries can be used, but test batteries only
11 get used and are accepted after years of experience.

12 And so the concern here is that this is
13 a test battery that no one knows about, that there is
14 no experience with. Our expert, Dr. Stern, has
15 submitted an affidavit as has been referred to. And
16 Dr. Stern identifies deficiencies with the test
17 battery in quite clear language. He states, the
18 specific tests selected and the life of the battery
19 would not be consistent with that given by the large
20 majority of neuropsychologists who specialize in
21 neurodegenerative disease.

22 So to your point, Your Honor, people in
23 the field, neuropsychologists, are determining
24 moderate dementia on a daily basis with their
25 patients. They are not using this test battery to do

1 it. They have never done it. It has never been
2 identified.

3 Dr. Stern also states in paragraph 50
4 of his declaration that the criteria used in the
5 settlement could require that the players' test
6 performance be even more impaired than what is often
7 seen in well-diagnosed cases of moderate stage
8 dementia.

9 Your Honor, that was our concern. Dr.
10 Stern verified it; that even if you had a moderately
11 impaired patient with dementia, they may not qualify
12 under the test battery. It is untested and our expert
13 believes that they won't qualify. That's
14 unacceptable.

15 Your Honor, it gets worse. The way
16 that a player's intellectual functioning pre-NFL is
17 determined is based on a test that is biased against
18 players from rural areas or worse school programs, and
19 that's because this -- it's called a pre-morbid test.
20 And they try -- the purpose of it is to determine
21 where was this player's intellect prior to playing in
22 the NFL. So they give a test and they ask for
23 pronunciation of certain words.

24 Well, if you have an accent, rural or
25 cultural accent, if you were from a school system that

1 didn't expose you, even if you have the same intellect
2 to someone who was in a good school system, if you're
3 in a lesser school system you may not have heard of
4 these words. You're not going to pronounce them as
5 well.

6 It is known that that will cause a
7 person to function more poorly. By making such a
8 rigid pre-morbid test, we are locking in an unfairness
9 that we believe is also inappropriate. That is also
10 dealt with in Dr. Stern's declaration.

11 THE COURT: All right. You have to
12 wrap up.

13 MR. WIEGAND: So, Your Honor, the
14 settling parties have not met their burden to show
15 that the proposed test battery can properly measure
16 even (indiscernible) injury in retired football
17 players.

18 THE COURT: Okay.

19 MR. WIEGAND: And there are three -- if
20 I could say there are three things --

21 THE COURT: Well, just --

22 MR. WIEGAND: -- what would improve it.

23 THE COURT: -- put them up because I
24 have limited -- you know, Mr. Molo gave me limitations
25 on the times and I think we can all see them --

1 (Laughter)

2 THE COURT: -- and I'll certainly take
3 that.

4 MR. WIEGAND: Thank you, Your Honor.

5 THE COURT: Okay. Well, I -- in other
6 words, you -- you told me -- I gave you a tote (sic).

7 Okay.

8 MR. WIEGAND: Thank you, Your Honor.

9 THE COURT: Thank you very much.

10 Okay. Now I think we can hear Mr.
11 Demetrio.

12 You have ten minutes, Mr. Demetrio.

13 MR. DEMETRIO: Thank you for that ten
14 minutes, Your Honor.

15 THE COURT: You're welcome.

16 MR. DEMETRIO: Judge Pausner (ph), a
17 distinguished judge in the Seventh Circuit, rendered
18 an opinion, published an opinion this year in a case
19 called Eubank versus Hella Windows (ph). And I would
20 just like to quote a couple of lines from that
21 opinion. I find them apropos:

22 "Class members have no control over
23 class counsel." This was, by the way, a class action
24 lawsuit that he found to be scandalous. He found that
25 the approval of the settlement was wrong, and he

1 stated, "When a judge is being urged by both
2 adversaries to approve the class action settlement
3 that they've negotiated, she's at a disadvantage in
4 evaluating the fairness of the settlement to the
5 class.

6 "Enter the objectors," said Judge
7 Pausner. "Members of the class who smell a rat can
8 object to the approval of a settlement," and he talks
9 about Rule 23 and the importance of the
10 representatives, class representatives representing
11 the best interest of all the class members.

12 He also states parenthetically that in
13 that case there was a study he cites that states that
14 "in class action lawsuits less than one-tenth of one
15 percent of the class members opt-out."

16 Judge Kazinski (ph), Alex, Ninth
17 Circuit in a case pending right now against Nissan
18 where he filed an objection states that, it's not
19 uncommon at all for people to not object, not opt-out
20 in class action lawsuits.

21 And pursuant to that we have a tsunami
22 of people who have opted-out and who have objected.
23 The fact of the matter is this is arbitrary, it's
24 unfair, and respectfully we hope you do not approve of
25 it as it is.

1 I would like the courtesy of
2 introducing Tregg Duerson and his mother, Alicia. May
3 I do that, Your Honor?

4 THE COURT: I told you that -- I had a
5 rule. You can introduce -- they can stand up.

6 MR. DEMETRIO: Introduce them.

7 THE COURT: Okay. Let them stand.

8 (Pause)

9 THE COURT: Okay. Thank you very much.

10 MR. DEMETRIO: This is their day in
11 court, the closest thing they're going to get to one,
12 and as I understand it you've ruled that they cannot
13 speak.

14 THE COURT: Well, I have ruled that
15 anyone who is represented by counsel, which is an
16 ordinary rule of a court, anyone who is represented by
17 counsel cannot speak. This is not a criminal case.
18 You have no right of allocution. That's my ruling.

19 Go on.

20 MR. DEMETRIO: After Tregg's father
21 filed a bullet into his heart and killed himself, his
22 family found notes begging them to have his brain
23 examined by the good folks at Boston University. This
24 was done. The findings were third stage CTE and that
25 his death with CTE was representative of what's turned

1 out to be now 79 others.

2 At the settlement table in this case no
3 class representative was there to advocate for the
4 people who died with CTE. No one. No one was
5 advocating that post-July 7th CTE needs to be
6 compensated. Say what they will, CTE is real. It's
7 with us. It's not going away and there are over
8 20,000 potential people who are going to suffer from
9 it.

10 As far as I'm concerned the only lawyer
11 in this room who deserves \$112 million is Mr. Karp.
12 The NFL by this settlement will never have to say what
13 they knew, when they knew it, and CTE, poof, it's
14 gone. Now I heard Mr. Karp say, no, CTE's very much a
15 part of this. Take it out, then. Take it out of the
16 release. Let the future Dave Duerson's families be a
17 part of this settlement. Let them be at the table.
18 They weren't when it was negotiated.

19 The NFL is proud of this settlement.
20 Yeah, no kidding. I would be, too. Ninety-nine
21 percent groundswell, everybody's saying this is the
22 greatest settlement ever. No. Mr. Molo covered that
23 quite well. But Mr. Seeger said something that caught
24 my attention. Early detection is very, very
25 important. Well, yeah. That's the whole purpose of

1 this lawsuit. That's the fraud that we're never going
2 to know about. If the Dave Duerson's of the world
3 knew what the problem might be, yeah, they could have
4 gotten attention earlier. So, yeah, early detection
5 is important.

6 And the smoking gun of all smoking
7 guns, this very accomplished, he told us, attorney on
8 his own website while he was negotiating away CTE for
9 all time says, it's the most serious of all illnesses
10 related to NFL concussions. That is the motherload of
11 a smoking gun.

12 And then to sound like we're Mother
13 Theresa, we don't want others committing suicide.
14 Yeah. Okay. Well, others are. And under this
15 unfair, arbitrary settlement, they're not going to be
16 compensated.

17 Chris Seeger publicly told the world,
18 this isn't my case. This isn't my legacy case. But
19 he said it's Judge Brody's. And I submit to you,
20 Judge, what is your legacy going to be if he is
21 correct? Are you going to just sort of approve this
22 as it is, unfair, as arbitrary as it is, or are you
23 going to let these former players, and I refer you to
24 our objections that we filed with you, Claude and
25 Clara, I ask you to read about Claude and Clara. They

1 don't know they need your vigilance, but we lawyers
2 know it, and that's what we ask for.

3 Thank you, Judge.

4 THE COURT: Thank you.

5 Okay. Mr. Gibbs has five minutes.

6 MR. GIBBS: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. GIBBS: And thank you for --

9 THE COURT: Good afternoon.

10 MR. GIBBS: Good afternoon. And thank
11 you for allowing me the opportunity to present our
12 arguments.

13 Judge, in sum and substance this
14 settlement as currently constructed cannot and will
15 not stand the test of time. Because of an overbroad
16 release, an over-narrow qualifying diagnoses that will
17 be frozen in time forever, the statement will not
18 fulfill its goal. Instead players and their families
19 will be left out in the cold.

20 The men who may be suffering from
21 today, or who will suffer from in the future, CTE or
22 other similar neurodegenerative diseases have had
23 their claims forever eviscerated. Even if the science
24 advances and CTE is the subject of epidemiological
25 studies, families who will lose their loved ones and

1 discover the CTE or other neurodegenerative processes
2 in their brains will have no recourse or no remedy.

3 This morning we heard that this is a
4 science-driven case and that we were promised the
5 settling parties will "continue to work together to
6 allow modifications." What does this mean pursuant to
7 the terms of the agreement? How will this be
8 accomplished pursuant to the terms of this agreement?
9 How will that be enforced? How does a class member
10 come and trigger judicial oversight? None of that is
11 addressed in this settlement agreement. The only
12 thing that this settlement agreement states as to a
13 development of the qualifying diagnoses is that in
14 Section 6.4(a) on a periodic basis not to exceed once
15 every ten years. Co-lead class counsel and counsel for
16 the NFL will agree to discuss things and will modify
17 it if they come to a written agreement. That's it.
18 That's all the agreement says.

19 Judge, 65 years is a long time. These
20 men and their families will suffer during those 65
21 years. We cannot allow these qualifying diagnoses,
22 these four limited qualifying diagnoses to be the only
23 thing that they can rely upon until the year 2079.

24 On behalf of the Duerson family, the
25 Blue (ph) family, and the other families that

1 inevitably will suffer from these horrific diseases
2 brought by repetitive head trauma sustained during an
3 NFL career, we ask that you deny final approval of
4 this settlement.

5 THE COURT: Thank you.

6 MR. GIBBS: Thank you.

7 THE COURT: All right. I think we're
8 going to break for lunch. I'm going to take till --
9 let's see. One moment, please. Don't stand yet. Let
10 me just figure this out.

11 (Pause)

12 THE COURT: We'll come back at -- I'll
13 take 25 of two. Okay. That's 55 minutes. Okay.
14 1:35. Court is recessed till 1:35.

15 (A chorus of thank you)

16 (Recess taken at 12:38 p.m.; resume at 1:33 p.m.)

17 THE CLERK: Please remain seated. This
18 court is now again in session.

19 THE COURT: Once a day -- once a day
20 standing --

21 (Laughter).

22 THE COURT: -- in respect for the
23 Court, but not -- not all the time.

24 Okay. One second. Well, did you put
25 that back in? I have -- because I have to know who

1 you are. You are Mr. Pentz, right?

2 MR. PENTZ: Yes, Your Honor.

3 THE COURT: Good. Okay. You have ten
4 minutes.

5 MR. PENTZ: My name is John Pentz. I
6 represent Fred Smerlas, Cleo Miller and eight other
7 former NFL football players, but I will be speaking
8 today in support of an objection made by Ben Utecht
9 who is in the courtroom and who will be speaking later
10 today. That objection --

11 THE COURT: That's not --

12 MR. PENTZ: -- has to do --

13 THE COURT: We can't do that. That's --
14 -- that is not -- I'm sorry, Mr. Pentz. That, I think,
15 was made clear.

16 MR. MOLO: Yeah. Judge --

17 THE COURT: Is that right, Mr. Molo?

18 MR. MOLO: Judge, in the -- Mr. -- I
19 believe Mr. Pentz had told me you're adopting Mr.
20 Utecht's objection and in the interest of organizing
21 people to allow people who wanted to speak and speak,
22 this was done this way.

23 So I certainly -- it was within --
24 clearly within the spirit of what you were trying to
25 do, Judge, and we mentioned that. I wouldn't

1 (indiscernible). So --

2 MR. PENTZ: Your Honor --

3 THE COURT: What --

4 MR. PENTZ: -- Mr. Utecht's lawyer is
5 in the courtroom prepared to speak on this if --

6 MR. MOLO: Well, Mr. Utecht's going to
7 speak, so --

8 THE COURT: Mr. Utecht's going to
9 speak.

10 MR. MOLO: Yes.

11 THE COURT: I can't have Mr. Utecht's
12 lawyer speak. Whom do you represent?

13 MR. PENTZ: That's why I'm here to
14 speak. Fred Smerlas, Cleo Miller, Judson Flynn and
15 seven other NFL -- former NFL players.

16 THE COURT: So it's not Mr. Utecht,
17 then?

18 MR. PENTZ: No. I never entered an
19 appearance on his behalf. No.

20 THE COURT: Well, what are you going to
21 speak about?

22 MR. PENTZ: I'm going to speak in
23 support of Mr. Utecht's objection that there may not
24 be enough money in the settlement fund to play -- to
25 pay claims 30, 40, or 50 years into the future.

1 THE COURT: All right. Okay. Tell me
2 why you --

3 MR. PENTZ: Okay. Thank you, Your
4 Honor.

5 THE COURT: You think it's the demise
6 of the NFL? Is that what you're concerned about?

7 MR. PENTZ: Well, that's one of the
8 possibilities, but there are --

9 (Laughter)

10 MR. PENTZ: -- other ones here.

11 THE COURT: Well, give me more
12 realistic ones.

13 MR. PENTZ: When you -- when you
14 rejected the original settlement, Your Honor, you
15 stated that:

16 "I am primarily concerned that not all
17 retired NFL football players who ultimately receive a
18 qualifying diagnosis or their related claimants will
19 be paid. In various hypothetical scenarios the
20 monetary award fund may lack the necessary funds to
21 pay monetary awards for qualifying diagnoses."

22 Now even though this current amended
23 settlement is uncapped, it doesn't actually guarantee
24 the payments as that term is understood.

25 THE COURT: How would you do that?

1 MR. PENTZ: Well, Your Honor, it would
2 be impossible to -- we have a couple of ideas. One is
3 you could bond it or you could insure it with an
4 insurance company.

5 THE COURT: And they're better off than
6 the NFL.

7 (Laughter)

8 MR. PENTZ: Right.

9 THE COURT: Okay. I just wanted to
10 know what your --

11 MR. PENTZ: It would have --

12 THE COURT: -- assumptions are.

13 MR. PENTZ: -- to be. Yeah.
14 Obviously, because in the -- the way the settlement
15 now works there are two funds that -- the monetary
16 awards fund and then something called a statutory
17 trust which is meant to secure that monetary awards
18 fund.

19 In year 11 of the settlement the NFL is
20 required to fund a statutory trust with enough money
21 to pay all claims for the next 55 years. That is an
22 impossibility. Nobody can forecast what amount that
23 would be. The NFL is doing this, is going to
24 determine this amount in its sole discretion.

25 THE COURT: But I thought that they

1 have -- they are -- aren't they responsible for
2 payment for 65 years?

3 MR. PENTZ: They are, Your Honor.

4 THE COURT: Okay.

5 MR. PENTZ: But Mr. Utecht's concern is
6 that if he got an award down the road, say 30 or 40
7 years from now, all he would have at that point would
8 be a breach of contract claim against the NFL if they
9 didn't pay his award.

10 THE COURT: Oh, okay. Okay. I
11 understand your argument.

12 MR. PENTZ: And one of the --

13 THE COURT: Good thing I'm not going to
14 be around to decide that.

15 (Laughter)

16 MR. PENTZ: Well, I don't think any of
17 us will, Your Honor.

18 Your Honor, that's part of the problem,
19 seriously, is that -- well, our main concern is Seeger
20 and Weiss because they're responsible for enforcing
21 all of the clauses.

22 THE COURT: You don't think that
23 they're going --

24 MR. SEEGER: I won't be around.

25 THE COURT: -- to be around. You don't

1 think --

2 MR. PENTZ: They won't be around. Will
3 their firm be around? Will an associate in that firm
4 be available 50 years from now when Mr. Utecht calls
5 and says, they're not paying my claim?

6 THE COURT: Okay. I hope --

7 MR. PENTZ: That's what we're --

8 THE COURT: -- I --

9 MR. PENTZ: -- worried about.

10 THE COURT: Okay. I understand your
11 concern. I think that you've explained it and I don't
12 think I need any further explanation. I certainly
13 will -- I'll think about it. Okay.

14 MR. PENTZ: Okay, Your Honor. I

15 THE COURT: Thank you --

16 MR. PENTZ: -- have more, but --

17 THE COURT: -- very much.

18 MR. PENTZ: -- if that's all you want
19 to hear --

20 THE COURT: No. That's it. Thank you
21 --

22 MR. PENTZ: Okay.

23 THE COURT: -- Mr. Pentz.

24 MR. PENTZ: Thank you.

25 THE COURT: Okay. Mr. Lubel. Okay.

1 (Pause)

2 THE COURT: Mr. Lubel, you're the one
3 who asked me to postpone this hearing because you
4 couldn't get here today or something.

5 MR. LUBEL: No, ma'am. I asked you if
6 we could continue the hearing because of the mass dump
7 -- document dump that was done --

8 THE COURT: All right. I --

9 MR. LUBEL: -- a week ago.

10 THE COURT: I -- obviously I denied --
11 I didn't have a chance for anyone to respond to that.
12 But I did look where you were from, and now that you
13 speak two or three words I know it's not New York.

14 (Laughter)

15 MR. LUBEL: Well, it's funny you say
16 that, Your Honor, because when I showed up this
17 morning downstairs --

18 THE COURT: Yes.

19 MR. LUBEL: -- the marshals wanted to
20 make sure I wasn't from Dallas.

21 (Laughter)

22 MR. LUBEL: And I assure you I'm not.

23 THE COURT: Okay. I -- where are you,
24 Beaumont, Texas?

25 MR. LUBEL: You know, I grew -- I was

1 actually raised in Beaumont, but I split time between
2 San Antonio where the Alamo is and Houston.

3 THE COURT: Okay. All right.

4 MR. LUBEL: So I appreciate your time.

5 THE COURT: Okay. Thank you.

6 MR. LUBEL: Judge, I've been asked to
7 address two components or features of this settlement
8 agreement that arbitrarily and unnecessarily will
9 reduce monetary awards if the settlement is approved
10 to various class members.

11 Number one are the eligible seasons,
12 that's one of the components, and number two is the
13 age for which the qualifying diagnosis is made. You
14 will find the eligible seasons on page 9, a definition
15 at -- on page 9 of the settlement under (kk). And
16 then on page 36 you will actually see a chart that I
17 will refer to later that provides how those deductions
18 are applied.

19 On Point Number 2, the age at the time
20 of the qualifying diagnosis, that is strictly Exhibit
21 3 to the settlement.

22 Judge, both of these components or
23 features of the settlement are flawed for two reasons.
24 Neither of them is reasonable and, number two, both
25 did not provide for the structural protections that

1 Anchem required in the United States Supreme Court
2 decision. Let me address that one first.

3 There's two subclass representatives,
4 Mr. Turner and Mr. Wooden (ph). And when you look at
5 both of their allegations what you will find is that
6 both of them played in the NFL for eight to nine
7 years. And so if you play in the NFL for more than
8 five -- we'll come back -- it's actually more detailed
9 than that. But there's a -- an arbitrary cutoff if
10 you will at five. And for -- after -- below five
11 years you get deducted. Both of the class
12 representatives played in excess of that, far in
13 excess of that, and so they are not impacted by the
14 deductions that occur under the eligible season
15 section.

16 Under the age for qualifying diagnosis, they
17 likewise are not adequate representatives because Mr.
18 Turner was diagnosed with his illness, based on his
19 allegations, before he reached 45 years old. And that
20 arbitrary line that they drew for what -- when the
21 deductions kick in or the reductions and monetary
22 awards is at 45 years old or older.

23 Now Mr. Wooden, the allegations are
24 that he has not currently been diagnosed with any of
25 the qualifying diagnose -- diseases or disorders.

1 However, best I can tell he's 40 or 41 years old and
2 he has time, three or four years, for which he could
3 be diagnosed with a qualifying diagnosis and,
4 therefore, he would not be impacted.

5 And so for those reasons, Your Honor,
6 we do not believe that either Mr. Wooden or Mr. Turner
7 are adequate representatives of the class or the
8 absentee members because neither of them appear to be
9 impacted when we focus in on these two sections.

10 THE COURT: Okay.

11 MR. LUBEL: Now I -- I'm sure the Court
12 has heard, I heard it before today and then I heard it
13 again, and that is this settlement does not require
14 any proof of causation. I heard it again today. Both
15 Mr. Karp and Mr. Seeger, on behalf of their groups,
16 said it. However, it wasn't within minutes, maybe 15
17 minutes within both of them saying that they were
18 using causation as justification for both of the
19 components of the settlement for which I'm complaining
20 about or which the objectors are complaining about.
21 And the exact words that I heard were, they service
22 proxies for causation and exposure and they are
23 scientifically based. Those are the words I heard.

24 Now I would like to -- if we can pull
25 up Exhibit 3 first.

1 (Pause)

2 MR. LUBEL: Well, I could do it on
3 ELMO.

4 THE COURT: Where's Jim? Jim? One
5 second.

6 (Pause)

7 THE COURT: What would I do without
8 you, Jim? They could do without me, but not without
9 you.

10 (Pause)

11 THE COURT: Is that it?

12 MR. LUBEL: Yes, Your Honor.

13 THE COURT: Okay.

14 MR. LUBEL: That is Exhibit 3 to the
15 settlement.

16 THE COURT: Okay.

17 MR. LUBEL: It was. It vanished.

18 THE COURT: We'll get it back. Right
19 now I'm not concerned.

20 MR. LUBEL: It's one way to cut down on
21 my argument, Judge.

22 (Laughter)

23 MR. LUBEL: That's it.

24 THE COURT: That's it? Oh, okay.

25 UNIDENTIFIED SPEAKER: Here you go.

1 Sorry about that.

2 MR. LUBEL: No. Thanks, Jim.

3 Your Honor --

4 THE COURT: Yes.

5 MR. LUBEL: -- this is Exhibit 3.

6 THE COURT: Okay. I see it.

7 MR. LUBEL: This is the section dealing
8 with age at the time of qualifying diagnosis.

9 THE COURT: Okay. All right.

10 MR. LUBEL: If you look at the top, on
11 the left-hand column you'll see age group and you'll
12 see under 45 and you'll see what appear to be fairly
13 large settlement numbers starting with ALS at \$5
14 million; death with CTE at 4 million and on and on.

15 If -- they claim that this is
16 scientifically based. So what evidence have they
17 provided, much less what argument, that somebody
18 between 25 and 45 should get exactly the same thing?
19 Is it their claim, is it the NFL's claim that somebody
20 that's diagnosed with any of these disorders, these
21 diseases at 25 years old has the same range of damages
22 as somebody does at 44?

23 Now they're the ones that -- Judge,
24 they have to prove that this is reasonable, that it's
25 rationally based. That's what Professor Calanoff has

1 said. That's the test. They provided the Court with
2 no rationalization on how somebody under 45, that that
3 whole age range group of people should be treated
4 exactly the same.

5 By the same token, if you focus in on
6 death with CTE and you look at the -- consider what a
7 44 year old would get. So a 44 year old diagnosed
8 with CTE before you approve, preliminarily approve the
9 settlement that is, would receive \$4 million assuming
10 no other setoffs or offsets. A 45 year old would
11 receive 3.2 million.

12 Now where's the science behind that,
13 Judge? Common sense tells you that a one-year change
14 in life expectancy does not justify, much less could
15 it be scientifically justified an \$800,000 delta. If
16 you go and you look even below that, if you're -- if
17 you're 49 and you're diagnosed, death with CTE, you
18 get \$3.2 million assuming no other offsets. If you're
19 50 you get \$900,000 less. That's with a -- again,
20 with a one-year change in life expectancy. And these
21 people have passed. They're already dead. There is --
22 -- there can be -- they've offered no scientific basis
23 for this categorization nor the numbers.

24 Your Honor, just another example. If
25 you look at Alzheimer's, if you're 44 years old and

1 you're diagnosed. You have a qualifying diagnosis of
2 Alzheimer's with -- assuming everything else is the
3 same, you get \$3.5 million. If you're 45, one year
4 difference, you get \$1,200,000 less.

5 Now what's that based on? Do they have
6 evidence that that one-year change in diagnosis date
7 has resulted in a million-two less in medical; that
8 it's somehow altered your life by worthy of \$1,200,000
9 change?

10 Judge, there -- there is no rational
11 basis for the numbers. What I suspect happened, and
12 it's pure speculation, is that when they initially sat
13 down and settled this case for \$650 plus million
14 before you rejected it, they tried to back in to how
15 the numbers would play out. And I'm not here to
16 debate the whole process of trying to back in and
17 fulfill your fiduciary obligations, but I -- but it
18 does offer you an explanation as to how this happens,
19 but it's not a rational explanation, nor is it
20 scientifically based as they told you.

21 I think it's also important to notice,
22 if you look at the -- if we can go to the 60 to 64
23 category, that whole line. Now Mr. Seeger told you
24 when he stood up that the primary basis for having
25 these deductions or reductions in monetary awards

1 based on age were because the science showed that when
2 you got into your 60s -- he either said age 60 or when
3 you entered your 60s -- the risk of being diagnosed
4 with these disorders, Parkinson's, Alzheimer's,
5 dementia-type disorders, they go up.

6 Well, is that -- look what we see,
7 Judge. He said it like there's some stark difference
8 at 60 years old or in the decade of your 60s. Do we
9 see a big difference between 55 and 60? We actually
10 see bigger differences when we looked at Alzheimer's,
11 Judge -- look at the difference between the 55
12 category under Alzheimer's and the 60. That's like a
13 \$200,000 difference.

14 Now they're focused in supposedly on this
15 decade of the -- your 60s. Now when we go back to the
16 first example I used on Alzheimer's, how do they
17 justify a million-two reduction between ages 44 and
18 ages 45 diagnosis? They can't do it. There's no
19 doctor that will give them that. There's no
20 scientific article that will justify it. They just
21 don't have it. And so it's their burden to prove to
22 the court that these are reasonable and they're
23 rational, and they're just not.

24 If we could move to --

25 THE COURT: Okay. Thank you. Are you

1 -- you've got more than the age?

2 MR. LUBEL: Not on this category, Your
3 Honor.

4 THE COURT: Okay. But --

5 MR. LUBEL: Just --

6 THE COURT: -- you know you're almost
7 finished with time, so why don't you -- yes.

8 MR. SEEGERT: I might be able to save
9 Mr. Lubel and the Court some time. If Mr. Lubel would
10 just, for the first time, apparently, read the
11 language at the bottom of that grid which explains
12 everything he just spent 15 minutes discussing. How
13 about blowing up that paragraph right underneath the
14 numbers?

15 Thank you, nice and big, nice and big
16 if you can. And then there's a word, average, in that
17 first sentence. You want to read that? I can read
18 it. It says, "The above monetary award levels are the
19 average based monetary awards for each qualifying
20 diagnosis." Now this won't make Mr. Lubel stop
21 complaining, but the -- in the grid category he was
22 talking about, 50 to 54 for ALS, there's a \$4 million
23 number. So that's the amount for a 47 year old. And
24 if you're a little younger it goes up and if you're a
25 little older it goes down. There are gradations

1 within each box.

2 THE COURT: Okay.

3 MR. SEEGER: There isn't a big jump.

4 Thank you, Judge.

5 MR. LUBEL: The jump is not -- the
6 delta, Judge, has not been proven to be rational or
7 reliable --

8 THE COURT: But that's not what you
9 said before. Okay. And that will be on them to do.

10 Okay. And what's your second -- you
11 have a second --

12 MR. LUBEL: If we can go to the
13 eligible seasons. This one -- so, Judge, if you were
14 to look at page 9 of the settlement there's a
15 definition of eligible seasons. Let me give you the
16 short version. Essentially, it is if you're on a
17 active roster of an NFL team for three or more games,
18 you -- you're entitled to an -- you get a season. If
19 you're on a (indiscernible) practice or developmental
20 squad for eight or more games you get a half a season.

21 When you look at the number of eligible
22 seasons, under five eligible seasons you start to get
23 deducts. And if we -- let's just focus on Number 5,
24 which is the two-and-a-half eligible seasons. The
25 problem they have here, Judge, is that when they

1 defined eligible seasons they did not include that you
2 had to play or what position you were, whether you
3 were a high impact position: Were you a cornerback;
4 were you a wide receiver; were you a linebacker; what
5 were you; did you play at all?

6 And so you've got players that in an
7 extreme example fit the definition of being in five
8 eligible seasons and not -- not deducted at all.

9 And so you've got players that in an
10 extreme example fit the definition of being in five
11 eligible seasons and not -- not deducted at all. No
12 deduction whatsoever that never played. They were on
13 an active roster for three or more games, for five
14 seasons, they had a qualifying diagnosis, they
15 wouldn't get deducted. Whereas the quarterback that
16 fell into the definition for two and a half years back
17 in the '70s or '80s where they didn't have these rules
18 that were designed to start protecting the
19 quarterbacks, if that quarterback only played or was
20 on an active roster for two and a half eligible
21 seasons he'd get 50 percent less, and that quarterback
22 could have played 16 games for 2 seasons versus the
23 field goal kicker, second string, that didn't play at
24 all, or the first string that was rarely on the goal.
25 The field goal kicker, whether he played or not, would

1 get twice the money as the quarterback that played
2 under their scenario.

3 There's no scientific basis for their
4 eligible seasons, there's no good reason to apply it
5 that way.

6 THE COURT: Thank you very much.

7 MR. LUBEL: Thanks, Judge.

8 Okay, Mr. Rosenthal. Okay.

9 MR. ROSENTHAL: Thank you, Your Honor.
10 My name is Michael Rosenthal, I represent Andrew
11 Stewart who played in the NFL from 1989 to 1993.

12 He has a qualifying diagnosis of
13 Parkinson's disease, but his objection is the
14 definition of eligible season, because the definition
15 here requires playing in a minimum of three games in a
16 regular season and excludes players like Andrew who
17 were put on injured reserve prior to that third game.

18 Both class counsel and the NFL have
19 submitted elaborate expert valuations of this
20 settlement, but neither use the criteria for eligible
21 season that they now insist are critical to this
22 settlement.

23 Neither class counsel nor the NFL
24 counsel has offered any explanation for why their
25 respective expert reports on the value of the

1 settlement failed to use the actual eligible season
2 criteria in their analysis.

3 Instead the NFL expert has based his
4 analysis on credited seasons, that's a concept from
5 the retirement plan where players vest, based on
6 number of credited seasons, they have eligibility for
7 pension based on the number of credited seasons.

8 The NFL's expert said that credited
9 seasons were a proxy -- his words -- a proxy for
10 eligible seasons. And they use the creditable season
11 data because that was readily available from the NFL.
12 Why didn't they use eligible season data? I think the
13 answer is because eligible season data is much more
14 difficult to come by, and that data is the data that
15 the players under this agreement would now have to
16 provide. Otherwise it would have been provided by the
17 NFL for the NFL's analysis. So it's left up to the
18 class members to dig up this data, establish the
19 number of eligible seasons.

20 But what did they have to do? They
21 have to submit, and it's their burden to submit by
22 objective evidence -- objective evidence the number of
23 eligible seasons that they have. There's no
24 definition of objective evidence and it's simply let
25 to the unfettered discretion of the claims

1 administrator. And usually when there's unfettered
2 discretion it means that the decision cannot be
3 overturned unless there's an abuse of discretion.
4 That's a very difficult standard to overcome, and it's
5 an unnecessary burden on the players here, all of whom
6 would be coming into this settlement who were seeking
7 benefits already having a qualifying diagnosis.

8 Now the NFL has contended in its papers
9 that the line drawing is fair because there's an
10 exception for players whose IR, injured reserve,
11 status was due to a concussion, but that's an illusory
12 benefit.

13 The NFL had an injury surveillance
14 system in place for a long time and they've had
15 studies of concussions. From 1995 through 2006 they
16 did a 12-year study of concussions. And during that
17 period, from 1996 to 2001, for example, only one
18 player lost more than 61 days before returning to
19 play. There's no evidence that any player went on
20 injured reserve because of or due to a concussion.

21 So the fact that they're offering that
22 as a protection is really illusory, when in fact we
23 know from the documents that I've submitted as well as
24 public records that the players during training camp
25 are suffering concussions, during pre-seasons are

1 suffering concussions, there were 61 at least in this
2 past pre-season.

3 Our solution is that the agreement
4 should include credited seasons as defined by the
5 retirement plan to account for pre-season and training
6 camp time. There's no dispute that concussive and
7 sub-concussive trauma occurred during those games and
8 during training camp. And in fact when my client,
9 Andrew, was playing in the '80s and '90s training
10 camps were far more brutal than they are today.

11 Finally, there's no additional
12 financial risk to the NFL if credited season is used
13 instead of eligible season or credited seasons added
14 to the definition of -- credited seasons is made to be
15 the objective evidence necessary to qualify.

16 Under the NFL's own analysis
17 \$675 million is more than sufficient to cover the
18 payments to cover class members and they use credited
19 season data. So using eligible season data by
20 definition will reduce the value to the players.

21 Given that we think that credited
22 season offers the players a better deal and a better
23 chance that the monetary payments will fairly --
24 fairly compensate them for their cognitive injuries
25 and loss of suffering.

1 THE COURT: Thank you, Mr. Rosenthal.

2 MR. ROSENTHAL: Thank you.

3 THE COURT: All right, Mr. Shah?

4 MR. SHAH: Good afternoon, Your Honor.

5 THE COURT: Good afternoon.

6 MR. SHAH: I'm here on behalf of the
7 family of Dale Williams.

8 Our objection is about whether
9 Mr. Williams died with ALS, and I'd like to read an
10 excerpt from three documents.

11 Mr. Williams' death certificate that
12 says "cause of death cardiac arrest as a result of
13 respiratory acidosis as a consequence of ALS."

14 His obituary published by the New York
15 Times in 1984 that says:

16 "Dale Williams, a former star offensive
17 guard at Florida State University and with the New
18 Orleans Saints, died Wednesday at age 39 of ALS."

19 Another obituary published by the
20 Tallahassee Democrat in 1984 that says:

21 "Earlier this year Williams came in a
22 wheelchair to Live Oak for a last reunion. The
23 disease that struck down Lou Gehrig hit Williams late
24 last season.

25 In October he saw a neurologist, but it

1 was not until last February that his affliction was
2 diagnosed by the Mayo Clinic."

3 Under this proposed settlement the NFL
4 will not acknowledge that Mr. Williams died with ALS.

5 The NFL has made a commitment to fully
6 compensate those players who have received the worst
7 cognitive diseases. They have said based on their
8 compensation grid that ALS is the worst of these
9 diseases. And in fact they have agreed that athletes
10 who have played at least 5 eligible seasons and are
11 under the age of 45 deserve to be fully compensated
12 because they have this strongest causal link between
13 playing in the NFL and being inflicted with one of
14 these neurocognitive diseases.

15 Mr. Williams played seven seasons with
16 the New Orleans Saints. He died at the age of 39, 10
17 years after retiring from the NFL. This settlement is
18 intended to protect Mr. Williams.

19 Now, Mr. Williams' family has to prove
20 his diagnosis through certain medical records, and
21 Mr. Williams was diagnosed in 1984 and by the Mayo
22 Clinic.

23 In November of '84 he was treated at
24 Baptist Memorial Hospital by Dr. Theal (ph), who's a
25 pulmonologist. Mr. Williams died in November of 1984,

1 Dr. Theal died in 2011, and Baptist Memorial Hospital
2 was swept away by Hurricane Katrina.

3 Mr. Williams' family has no way to
4 submit any medical records, but the NFL does say on
5 page 132 to 133 of their response that a death
6 certificate can be considered a medical record. But
7 here's the thing, the death certificate has to be
8 signed by a neurologist, neurosurgeon, or
9 neurospecialist. This rigid requirement as to the
10 type of physician that must sign the death certificate
11 leaves Mr. Williams and others in his position without
12 an ability to prove his illness, and in fact the Mayo
13 Clinic states that the most common cause of death with
14 ALS is respiratory failure, which means most patients
15 at the end of their life will see a pulmonologist like
16 Dr. Theal who will sign the death certificate.

17 Now the NFL suggests that this is an
18 anti-fraud measure, but there's nothing unreliable
19 about the contents of a death certificate simply
20 because it was signed by someone other than a
21 neurosurgeon.

22 In fact the American Academy of
23 Neurology in their paper published in 2012 linking
24 degenerative disease -- causes of death among retired
25 NFL players bases their conclusions after reviewing

1 death certificates.

2 The Journal of Epidemiology in
3 Community Health in 1992 concluded that death
4 certificates diagnoses of ALS were adequate.

5 Finally in terms of to anti-fraud
6 argument. As Mr. Rosenthal just said, when they're
7 talking about eligibility they can use objective
8 evidence such as pay stubs, newspaper printouts, but
9 when it comes to proving the illness something as
10 objective as an obituary can't be used.

11 I'm here on behalf of Mr. Williams and
12 his family. The only fair thing to do is to modify
13 this settlement so that he is protected.

14 THE COURT: Thank you. Appreciate
15 that, Mr. Shah.

16 Mr. Manochi?

17 MR. MANOCHI: Good afternoon, Your
18 Honor. Thank you for giving us the opportunity this
19 afternoon to speak on behalf of objectors Craig and
20 Dawn Heimbürger.

21 Mr. Heimbürger I think would be
22 categorized as a journeyman player playing basically
23 between four and five seasons, one of which was in the
24 NFL Europe, and in the years 1999 to 2002.

25 He feels very strongly that the

1 settlement agreement should not be approved, and we
2 therefore respectfully request that the Court
3 carefully review each of the objections in
4 Mr. Heimbürger's objections submitted with the Court
5 and give it the due consideration that it deserves.

6 The -- I don't want to belabor the
7 point, I think Mr. Molo and Mr. Lubel have raised the
8 point nicely with regard to the Amchem issue, I just
9 simply point out that here Mr. Heimbürger in the 2000
10 year played for the NFL Europe, we -- as been pointed
11 out that both Mr. Turner and Mr. Wooden were five-
12 season players in the NFL, there were no issues there
13 with regard to Europe, so we think some consideration
14 should have been given in terms of a subclass of some
15 sort to deal with the issues that are raised by the
16 reductions off of the eligible seasons for various
17 years. We won't belabor the point, we just simply put
18 it -- leave it at that.

19 The more important aspect of my
20 presentation this afternoon is to discuss the sipray
21 elements of the settlement agreement, it's the
22 \$10 million that's been --

23 THE COURT: Let me ask you something.
24 Would you be happy with this agreement if they just
25 weren't -- they weren't obligated to give any money to

1 the education fund?

2 MR. MANOCHI: No, we think --

3 THE COURT: Would that solve the sipray
4 issue?

5 MR. MANOCHI: No, I don't think it's --

6 THE COURT: And should I strike it?

7 MR. MANOCHI: No, I think it should be
8 reallocated, and here's the -- here's the reasons,
9 Your Honor. The -- we can sit here and debate whether
10 sipray or not, we don't agree with the NFL's version
11 that just because it's -- there's not going to be an
12 unclean running here so it's not sipray.

13 THE COURT: Exactly.

14 MR. MANOCHI: We -- we kind of -- we
15 suggest that the Court respectfully look at what Judge
16 Roberts in the (indiscernible - 2:08:58) case defined
17 it as and what the Third Circuit defined it as in
18 connection with its review of the matter in the Baby
19 Products case.

20 Judge Roberts calls sipray the
21 distribution of settlement funds --

22 THE COURT: There's no question about
23 the fact I was the -- I was the judge in the Baby
24 Products case so I'm very familiar with that.

25 MR. MANOCHI: Okay. Okay.

1 THE COURT: So it was sipray.

2 I don't quite understand if I strike
3 the \$10 million for education then everybody who
4 complains about sipray should be a lot happier.

5 MR. MANOCHI: No, I think my argument,
6 Your Honor, is those monies are better allocated to
7 the -- to going toward other elements of the class,
8 and here's a perfect example, okay? NFL Europe for
9 instance. Mr. Heimbürger played in Europe for a year,
10 he doesn't get any credit for it. If we look to
11 Mr. Calanoff, the law professor and plaintiffs'
12 expert, settling class counsels' expert, he says that
13 the NFL Europe amounts should have been included as an
14 eligible season, okay?

15 So the point simply is being that the
16 monies, even by plaintiffs' own omission -- I mean the
17 whole purpose of the class action settlement is to
18 directly -- to compensate to the members of the class
19 as directly as possible, and Mr. Heimbürger is a
20 member of the class. He's not getting any eligibility
21 for NFL Europe. Now, Mr. Calanoff seems to suggest
22 that that should be an element that is compensated.

23 So to the extent that with the sipray
24 element we think the record is uncontroverted as a
25 matter of fact that the members of the class aren't

1 being compensated as directly as possible. To the
2 extent that the sipray element goes to that imperfect
3 third-party element of whatever a distribution is,
4 that is what our concern is.

5 THE COURT: Well, I understand that.
6 Thank you.

7 MR. MANOCHI: Okay. Thank you.

8 And one suggestion -- I mean there is
9 -- there may have been ways other to more closely --
10 to more closely define how it is that those monies are
11 spent. We don't happen to think that an education
12 fund directly benefits the members of this class,
13 which are defined as retired NFL football players.
14 They don't have to worry about issues of safety, they
15 don't play football anymore.

16 So we simply suggest that that's
17 another element here which indicates that it's not
18 truly something that should be a part of this
19 settlement. If the NFL wants to do it independently
20 God bless them.

21 THE COURT: Okay.

22 MR. MANOCHI: I -- you know, I'm
23 done --

24 THE COURT: Would you like me to --
25 okay. Thank you very much.

1 MR. MANOCHI: I appreciate your time.
2 Thank you.

3 THE COURT: You're welcome.

4 Okay. We're going to hear from some of
5 the individual players. Mr. Molo, I have covered all
6 the lawyers; is that correct?

7 MR. MOLO: Everyone, Judge, that is on
8 the list that I have, yes.

9 THE COURT: Okay, good.

10 All right, Eugene Moore, is he here? I
11 don't want -- good afternoon, Mr. Moore. I don't want
12 to cut anyone off, but you understand that you have
13 five minutes.

14 MR. MOORE: Okay.

15 THE COURT: Thank you.

16 MR. MOORE: As a -- I may be 30 seconds
17 over. As a player --

18 THE COURT: No, no, no, no, no.

19 MR. MOORE: Okay. All right. Okay.

20 My name is Eugene Player, I am a former
21 player, and I think it's very important that my
22 perspective as a former player be taken seriously.

23 And first of all I'd like to say good
24 morning, Your Honor, and thank you for keeping this
25 process on track. I got it. I got it.

1 THE COURT: Good afternoon.

2 MR. MOORE: You read my summary. Okay.

3 The first thing I'd like to say is I
4 was drafted by the 49's, I bounced around for three
5 years, five training camps, four teams.

6 I'd like to preface my objections by
7 saying that I believe that -- and many others that
8 I've spoken to -- that class counsel has utterly, and
9 I -- with all due respect -- failed the players and
10 their spouses.

11 Why do I say that? Because they had an
12 obligation and responsibility to fight for the
13 players. By allowing the elimination of CTE and
14 overly broad releases they failed. It's as though
15 there was some sort of alternative universe being
16 constructed into which all of the figures and
17 computations were entered.

18 The preliminary concussion settlement
19 had its origins as a CTE litigation. They're gone.
20 There's nowhere to be found in the document. How does
21 that happen? It's astonishing, it's more than
22 astonishing. There's something -- well let's just say
23 it's astonishing and breathtaking. It's akin to
24 bringing a coal miner's health claim without black
25 lung disease or an asbestos health claim without

1 asbestosis. How could that be that we're here today
2 even expressing our objection to a settlement that
3 does not include CTE is astonishing.

4 Number two, the NFL preliminary
5 settlement functionally excludes a majority of players
6 whoever strapped on a helmet. Why do I say that? And
7 if it doesn't exclude them it places insurmountable
8 hurdles in the way in their road to claiming -- to
9 basically receiving their claim. And that's been
10 addressed by several people here. I can't even begin
11 to contemplate a more exclusionary agreement.

12 While contemplating this a couple of
13 weeks ago I realized that one of the underlying
14 structural flaws is the assumption and premise that
15 NFL -- that the amount of contact that an NFL player
16 takes is based primarily on the assumption of game
17 day. There is something called pre-season, there's
18 something that predates pre-season that's called
19 training camp.

20 In training camp, and I can tell you
21 because I was in enough of them, you hit two times a
22 day, you go through two a days. You are fighting for
23 a job whether you're a rookie, whether you're coming
24 off of injured reserve, whether you are trying to make
25 the (indiscernible - 2:15:27) again, whether you were

1 on the cusp, you were fighting for a position, thus
2 you have a lot of fights during training camp, it's a
3 hyper-competitive, people are at each other, you're
4 doing thing ins training camp that would cause a team
5 to be fined during training camp. Survey enough
6 players they will agree.

7 My educated guess is that from the
8 beginning of training camp through to pre-season the
9 amount of impact that you take during those first 6 to
10 8 weeks is at least 50 percent of the total and maybe
11 more, and you start bouncing around, as I did, and it
12 is going to be more, because you don't let an
13 opportunity pass to hit somebody. And you have the
14 language of the coaches, hit him, lay him out, knock
15 him on the rear, whatever, I mean it's a lot more
16 colorful than that. So --

17 THE COURT: I appreciate your
18 restraint.

19 MR. MOORE: Pardon?

20 THE COURT: I said I appreciate your
21 restraint. I'm only teasing.

22 (Laughter)

23 MR. MOORE: Okay. All right. All
24 right.

25 And at the end of the process it's a

1 part of the process and we all live with it and so
2 forth, only a select few make it to the regular
3 season, not guaranteed. Contracts aren't guaranteed.
4 A lot of people are surprised when they hear that. I
5 signed in 1969 for \$12,500. No one is -- and a 12,500
6 salary.

7 One of the reasons I say that is
8 because if I impute the -- or I did impute the grid,
9 because the structural (indiscernible - 2:17:00) flows
10 down through to the compensation assumptions and
11 calculations in the grid, I get a \$5,000 maximum
12 award, and the discounts for -- let's say if I'm 70
13 years old, 71, 72, I've gotten to \$40,000 with
14 institutional care now running over \$150,000 for a
15 large NFL ex-player, my 27 -- now 27 and 29 year old
16 children -- I'm divorced -- are now left to assume the
17 burden, and we've got to talk about burden and spouses
18 -- and I realize I can't now.

19 THE COURT: I have to cut you off.

20 MR. MOORE: The only other thing I'd
21 like to --

22 THE COURT: I'd like you to finish up.

23 MR. MOORE: Judge, may I just --

24 THE COURT: Just conclude what you're
25 going to say.

1 MR. MOORE: Pardon me?

2 THE COURT: Please conclude what you're
3 going to say.

4 MR. MOORE: Okay. This is -- Your
5 Honor, this is the conclusion.

6 This is a fairness proposal, a modest
7 suggestion, that the NFL simply take care of the
8 treatment expenses for all living players. The older
9 ones are going to die sooner, so they can run the
10 numbers, if they really care.

11 Two, provide a stipend for the spouses
12 and/or caregivers, because they are taking the hit
13 too.

14 And lastly, if I may, I would like your
15 permission to file a post-hearing memo.

16 THE COURT: Okay.

17 MR. MOORE: Okay. Thank you very much.

18 THE COURT: Thank you very much. You
19 have -- nobody has any objection to that?

20 UNIDENTIFIED SPEAKER: No, Your Honor.

21 UNIDENTIFIED SPEAKER: No, Your Honor.

22 THE COURT: Okay.

23 All right, Ms. Hawkins. Mary Hawkins.

24 MS. HAWKINS: Good afternoon, Judge
25 Brody.

1 THE COURT: Good afternoon,
2 Ms. Hawkins.

3 MS. HAWKINS: I thank you for the
4 opportunity to submit by objection to the proposed
5 settlement.

6 I am the spouse of Mr. Ross Hawkins,
7 Sr., who's also known as Rip, R-I-P, who was a second
8 round draft choice of the original Minnesota Vikings
9 team and as a middle linebacker, he served as co-
10 captain and defensive captain, and played for five
11 seasons from 1961 to 1965 until he retired to leave
12 the team to complete law school at Emery University,
13 and also to direct his energy toward the care of his
14 wife at that time who was ill and later died.

15 I'm here today as wife and care partner
16 for my husband Rip as his representative. My husband
17 can no longer consistently participate in his dialogue
18 with the same succinct, robust quality that he may
19 have demonstrated as a player or a co-captain or as he
20 did in his subsequent years as his career as a
21 district attorney.

22 So I'm here to offer a voice that
23 shares my experiences, insights, and our concerns to
24 the proposed settlement, and I am attempting to
25 articulate these in a manner that accurately reflects

1 his perspective as I have known them in our nearly 30-
2 year relationship.

3 I'm here also as a seasoned healthcare
4 provider who has for more than 40 years mad advocacy
5 my primary goal for those whom I have the privilege to
6 serve across several disciplines from newborn to
7 geriatric, acute care, chronic care, including trauma
8 units, rehabilitation of TBI or traumatic brain
9 injury, neurologic diseases, spinal cord injury,
10 cardiac rehab, pain management, neonatal intensive
11 care, as well as clinical research.

12 I've also had the honor and privilege
13 of accompanying patients and their families as a
14 hospice volunteer serving care partners and families
15 of those in their near end of life decisions.

16 I will say that despite my many years
17 of experience professionally and personally it was not
18 nearly enough to prepare me for the most challenging
19 role that I have assumed over the last five years as
20 my husband progresses in his course of neurocognitive
21 decline.

22 October 2013 he was enrolled in the 88
23 plan. And I'm making ever effort -- excuse me --

24 THE COURT: It's okay.

25 MS. HAWKINS: -- daily to provide care

1 that will allow him to maintain the highest quality of
2 life.

3 THE COURT: Okay. Would you like --
4 just direct yourself --

5 MS. HAWKINS: Thank you.

6 THE COURT: -- to the objection that
7 you have.

8 MS. HAWKINS: Okay. My objections
9 include the process of diagnosis. Primary care
10 physicians were dismissive and often indifferent to my
11 husband's symptoms and needs. He was diagnosed only
12 one year ago with -- excuse me -- he assumed the
13 rigorous neuropsychological testing and he was
14 diagnosed with post-concussive dementia, and a year
15 later he was reassessed by a neurologist for a
16 diagnosis of dementia with lewy bodies and a very
17 different care plan was recommended. And our
18 experience illustrates the difficulty of assessment
19 and accurate diagnosis.

20 Nearly 80 percent of people with lewy
21 body receive a diagnosis for a different cognitive,
22 movement or psychiatric disorder before ultimately
23 learning that they have lewy body, and half of the
24 people saw 3 or more doctors for 10 visits over the
25 course of a year before they were diagnosed, and

1 diagnosis required more than 2 years from the onset of
2 symptoms for 31 percent of the cases.

3 Lewy body dementia is the second most
4 common form of degenerative dementia affecting an
5 estimated 1.3 million people in the United States and
6 is most often misdiagnosed as Alzheimer disease, and
7 despite its prevalence there is no designated sub-
8 category for dementia of lewy body diagnosis in the
9 structured settlement as a core feature.

10 So do former players diagnosed with
11 lewy body dementia fall in the category of
12 Parkinson's? Because lewy body is considered part of
13 the Parkinson's spectrum, and as its name also implies
14 the dementia is part of its core feature. So are they
15 in the category of Parkinson's or dementia? It
16 presents a puzzling conundrum with significant
17 financial consequences.

18 Research by Bostrum (ph) identified
19 utilization resources are greater with patients of
20 dementia with lewy body and use more than double the
21 amount of resources compared to Alzheimer diseased
22 patients. They use specially greater resources in
23 accommodation, long-term care, required more
24 outpatient care, informal care, community services,
25 and pharmaceutical care.

1 The cost for care for dementia of the
2 lewy body patients who present with apathy was almost
3 three times as high as Alzheimer patients with apathy.

4 And these findings were collected from
5 the general population and do not even consider the
6 psychosocial dynamics of former athletes nor the
7 typical large physical size that presents additional
8 care management problems.

9 While the baseline assessment program
10 may offer an infrastructure to direct the assessment
11 intervention process, our personal experience and the
12 data provide -- illustrate the manifold changes --
13 challenges in the assessment process.

14 THE COURT: Ms. Hawkins, I'm going to
15 have to ask you to --

16 MS. HAWKINS: Okay.

17 THE COURT: -- conclude.

18 MS. HAWKINS: \$10 million designated
19 for education is described in some reports as
20 targeting youth football, and those who have been
21 diagnosed with neurocognitive disease and those caring
22 for them it's little consolation for the fund -- that
23 this fund may be allocated for education that allows
24 the NFL to continue to market the game under the veil
25 of enhanced safety.

1 What would be more appropriate in terms
2 of informed choice is education and public service
3 announcements comparable to those mandated for the
4 tobacco industry that have graphically depicted the
5 affects of smoking.

6 THE COURT: Okay. Thank you.

7 MS. HAWKINS: So in conclusion --

8 THE COURT: Yes.

9 MS. HAWKINS: -- in conclusion in care-
10 related areas there's a troublesome feature.

11 My final objection that I present today
12 relates to what I believe is the prejudicial nature of
13 the settlement, distribution based on player age.

14 While age is certainly recognized as a
15 significant factor in the development of
16 neurocognitive disease these older alumni are being
17 penalized for the fact that medical discoveries and
18 the awareness of neurodegenerative diseases related to
19 head trauma did not exist decades ago, even though for
20 many players their unrecognized and untreated symptoms
21 were prevalent.

22 What did exist was a culture bravado
23 that fosters denial of pain and symptoms and rewarded
24 these men for their stoicism, often with the
25 administration of pharmaceutical agents that

1 contributed to their long-term sequela.

2 THE COURT: I have to cut you off. I
3 understand your position on that --

4 MS. HAWKINS: All right.

5 THE COURT: -- on age. And I think
6 that's -- I'm going have to cut it off.

7 MS. HAWKINS: And there was no early
8 metric for that.

9 THE COURT: Okay. Thank you very much.

10 MS. HAWKINS: Thank you.

11 THE COURT: Thank you, Ms. Hawkins.

12 Ms. Perfetto?

13 MS. PERFETTO: Your Honor, thank you so
14 much for allowing me to be here today, I really
15 appreciate your time.

16 I want to address a number of things
17 that were talked about today, and I actually sat in
18 the back of the room listening to everything that was
19 said and I threw my original notes away and started
20 all over again. I will.

21 THE COURT: Five minutes.

22 MS. PERFETTO: I will.

23 My objection -- well let me begin with
24 some of the things that were said about the opt outs,
25 so let me tell you why I did not opt out.

1 I did not opt out because I wanted to
2 be able to have this opportunity to speak with you
3 today, and if I opted out I would not be able to do
4 that, that's why I did not opt out. So please be
5 aware of that.

6 My objection -- my main objection is to
7 the age of the player at diagnosis. As you've already
8 heard discussed today and you saw the grid that was
9 put up on the screen, I heard about scientific
10 evidence, about causality and risk and what that was
11 based on.

12 Your Honor, I'm trained as an
13 epidemiologist, I know about causality and risk. I
14 also know about something called detection bias. And
15 detection bias is when you don't find a disease
16 because you're not looking for it, or when you do find
17 more of a disease because you've learned that you need
18 to start looking for it.

19 The most credible example that I can
20 find to you that I -- that brings to mind today is
21 that of Katie Couric talking about her husband having
22 colon cancer. When she brought that to the public eye
23 many people started to be tested for colon cancer, and
24 lo and behold we found more colon cancer in this
25 country. Was it because there was a sudden increase

1 in colon cancer? No, it was because we started
2 looking for it.

3 Well we did not look for diseases like
4 CTE, and what we're looking for in players today, we
5 didn't do that prior to the early 2000s, because we
6 didn't know to look for it. And one of the reasons we
7 didn't know is exactly the reason why we are here
8 today, it's the reason for this case, because the NFL
9 is accused of hiding that information and putting out
10 false information.

11 So the detection bias that was
12 perpetuated through that is the reason why many
13 players never got a diagnosis in the first place or
14 they were diagnosed very late or they were
15 misdiagnosed, and now that poor diagnosis that we had
16 in the past, that detection bias that we had in the
17 past is the reason why those players who are older and
18 their families and their widows, like myself, and
19 wives and children will be getting a lower amount of
20 money than if we had known about this information
21 earlier and if it had not been hidden.

22 I've also heard a lot of presumptions
23 today about why the objectors are objecting, and I can
24 tell you that I've heard from many other wives and
25 widows, there's confusion, they don't know what

1 they're being offered, they didn't know what to do,
2 they don't understand what's in the document, and they
3 weren't getting appropriate help in understanding
4 what's in there.

5 When I asked them point-blank do you
6 know how much you're being offered, do you know what
7 the amount is? They had absolutely no idea, they just
8 say to me, no, but at my age I can't turn it down. So
9 there's substantial fear. Confusion multiplied by
10 fear, multiplied by desperation in some circumstances
11 because they have some desperate financial
12 circumstances because of their husband's illness.

13 So, I think when you multiply all of
14 those kinds of things you're looking at unfairness in
15 this settlement when it comes to those older players,
16 and they're put in the position, I feel, of gravelling
17 -- gravelling for more, and that's really what they're
18 being accused of is only being an objector because
19 they want more.

20 I think what they're actually asking
21 for, Your Honor, is fairness in this so that their
22 issues will be considered, and I think that with
23 appropriate looking at the settlement the way that it
24 is that these kinds of things can be remedied and that
25 a good settlement can come out of this.

1 I just respectfully request that you
2 consider those things, and that if the NFL really
3 wants to do the right thing it can do the right thing.
4 It should have done the right thing a long time ago
5 and there's nothing from stopping it from doing the
6 right thing now.

7 If it takes gravelling I'm here to
8 gravel for the families of those older players for
9 fairness.

10 Thank you.

11 THE COURT: Thank you. Thank you very
12 much.

13 Mr. Utecht?

14 MR. UTECHT: Good afternoon.

15 THE COURT: Remember what this means.

16 MR. UTECHT: Five minutes.

17 THE COURT: That's right.

18 MR. UTECHT: I gotcha.

19 THE COURT: You got me.

20 MR. UTECHT: Thank you so much for
21 this, Your Honor. I'm a kid from a small town,
22 Rivertown in Minnesota. If you told me I'd be
23 standing on this platform I would have laughed at you.

24 THE COURT: I would say the same thing
25 about myself, so.

1 MR. UTECHT: Okay.

2 (Laughter)

3 THE COURT: We all feel that way.

4 MR. UTECHT: And also my lawyer was
5 unable to speak about my objections --

6 THE COURT: Okay.

7 MR. UTECHT: -- because he's giving me
8 the chance to speak, so I do have my brief if you want
9 a better understanding of its --

10 THE COURT: Well just tell me what your
11 concern is.

12 MR. UTECHT: Okay. Thank you very
13 much.

14 My background is this. I played six
15 years in the NFL, I was fortunate enough to win the
16 Super Bowl in 2006 with the Indianapolis Colts, went
17 onto play two years with Cincinnati. I'm a father of
18 three beautiful girls, I love my wife, and I'm trying
19 to redefine myself now as a man.

20 If I'm being completely vulnerable with
21 you I'm just going to be honest. I love -- I love
22 football. I love the game of football for so many
23 reasons.

24 One of the most important reasons is
25 memory. Your Honor, I hope -- I hope I never -- I

1 hope I never forget the first time I played catch in
2 the backyard with my dad, the third grade. I hope
3 that I never forget the look on mom's face when I came
4 back as a junior in high school and told her that I
5 had just been offered a full scholarship to the
6 University of Minnesota. And I hope that I never
7 forget February of 2007 when I stepped on the biggest
8 stage in the world with Super Bowl XXXXI.

9 Unfortunately in 2009 I regained
10 consciousness in Kentucky -- in training camp with the
11 Cincinnati Bengals facing my fifth documented
12 concussion. Your Honor, that sent me into an eight-
13 month rehabilitation process before I was cleared --
14 actually cleared to go back to play.

15 THE COURT: Let me hear your objection.
16 I want to make sure you get to it because I --

17 MR. UTECHT: I'm getting right to it
18 here.

19 THE COURT: -- do care and I'm very --
20 I want to know what your objection to the settlement
21 is.

22 MR. UTECHT: Thank you very much. That
23 leads into my objection and my concern, which is this.

24 According to Section 25 I don't believe
25 that this settlement guarantees that I will able to

1 receive an award 65 years down the road.

2 Now when the gentleman tried to offer
3 that objection it was received with laughs, but this
4 is my life. I'm one of the youngest in this case.
5 I'm 33 years old and I suffer from memory problems at
6 33 years old. So I'm going to potentially be bringing
7 an award 30, 40 years from now, and the language --

8 THE COURT: Are you afraid of -- tell
9 me what you're afraid. You're afraid that there won't
10 be enough money there?

11 MR. UTECHT: I'm afraid that there
12 won't be enough money there, that the security is not
13 there and it's not available to me because of the
14 issues within the trust.

15 THE COURT: Well as I understood it,
16 and I'm going to ask the NFL to explain it to me in
17 rebuttal, but my understanding is they are always
18 responsible. If -- I mean I don't know what better
19 guarantees you can have than having an institution
20 like the NFL, which you do care about --

21 MR. UTECHT: Well, I care about
22 football.

23 THE COURT: -- behind their agreement.
24 These -- this security is just additional as I
25 understand it, but I will ask about that.

1 MR. UTECHT: Thank you.

2 THE COURT: And I expect Mr. --
3 Mr. Karp, you'll address that, won't you?

4 MR. KARP: I will, Your Honor.

5 THE COURT: Okay. That's what I'm --
6 and I have to know about that, because that's
7 something that I was concerned about from the very
8 start, and that's why I'm capless, to make sure that
9 there was a top --

10 MR. UTECHT: Correct.

11 THE COURT: -- number that they have to
12 insulate -- that they could insulate themselves with.

13 MR. UTECHT: Correct.

14 THE COURT: So that's -- you and I
15 share that concern.

16 MR. UTECHT: And that's why I brought
17 forth this objection.

18 THE COURT: Okay.

19 MR. UTECHT: There are many other
20 objections that I can relate to, but I also understand
21 how the settlement works.

22 I brought this objection forward
23 because the language that we found in that section
24 does not support their being the security that gives
25 me enough comfort to say I feel like this is going to

1 be there for me in 65 years or not.

2 THE COURT: Okay. I appreciate that.

3 Thank you very much.

4 MR. UTECHT: Thank you for your time.

5 THE COURT: That's what I wanted to
6 know.

7 MR. UTECHT: Okay.

8 THE COURT: Okay.

9 All right. Mr. Erickson?

10 Mr. Erickson. Is there a Mr. Erickson? Okay.

11 All right. Ms. Carpenter? Rebecca
12 Carpenter?

13 I think one more -- Mr. Erickson? Did
14 you speak with Mr. Erickson?

15 MR. MOLO: I personally did not. I'll
16 go -- I'll look in the hall.

17 THE COURT: No, it's okay. We'll do it
18 after this -- after Ms. Carpenter.

19 MS. CARPENTER: Hi.

20 THE COURT: Hello, Ms. Carpenter.

21 MS. CARPENTER: I'm sorry, I'm so
22 nervous.

23 THE COURT: Oh, I understand.

24 MS. CARPENTER: Thank you.

25 THE COURT: Just relax. I am very

1 scary.

2 (Laughter)

3 MS. CARPENTER: Thank you for taking
4 the time to listen to me.

5 My objection concerns primarily I guess the
6 lack of screening medical services, counseling, and
7 family support services for families who are living
8 with symptoms other than significant dementia. I'm
9 one of those former kids.

10 THE COURT: And you are -- are you --
11 and you are a child of --

12 MS. CARPENTER: I am a child, although
13 I don't look like one, but yes.

14 THE COURT: Are you a child of a former
15 player?

16 MS. CARPENTER: Yeah, I'll tell you who
17 he is, Your Honor.

18 THE COURT: Okay.

19 MS. CARPENTER: My father was Lew
20 Carpenter, he played for ten years in the NFL as a
21 running back, he was a Packer, he played in three
22 world championships. He was a coach for 30 years in
23 the NFL. He also coached in NFL Europe.

24 His onset of his symptoms, I would say
25 he fell under the mood disorder category and other

1 symptoms, which were very different and significant.

2 I want to read, because I don't want to
3 miss my points and I'll try to go quickly.

4 I think that it's real important for
5 people to understand that there's a 20- to 30-year
6 period between the onset of initial symptoms and the
7 onset of full-blown dementia in men like my father.

8 Long (indiscernible - 2:37:52) dementia
9 diagnosis symptoms can derail both family life and
10 career.

11 Lew Carpenter was diagnosed his case
12 and there were 17 of the disease we're currently
13 calling CTE, and I'm here in part to put a face on
14 what it means to live with a parent who has a mood
15 disorder due to a brain injury.

16 I have a second interest in being here
17 and that has to do with my love of children and my
18 desperate desire to make sure that the children of
19 these men become partially the focus of this hearing.

20 I have a masters in teaching from the
21 University of Southern California, I have a particular
22 passion for working with children coming from high-
23 stress environments and particularly high poverty or
24 violence or children who are confronted with scarcity
25 (indiscernible - 2:38:30) material scarcity, but

1 scarcity of mom, scarcity of dad, situations where
2 parents are tremendously overburdened by the demands
3 of daily life.

4 There's a technical term for that, it's
5 called proximal abandonment. Like Pauline Bosh (ph)
6 she talks about her books on living with people with
7 disease and other chronic disease. And this can be
8 devastating for a child.

9 In the case of a traumatic brain injury
10 or CTE the proximal abandonment is due to the
11 devastating implications of behaviors relating to the
12 disease. It's not just the loss of the father, it's
13 often loss of the mother too.

14 The wives are overwhelmed with the
15 demands of caring for their husband's symptoms, mom
16 isn't present, the children are often -- become the
17 caregiver for dad, and in the worse of the situations
18 the kids are in the cross fire of dad's erratic
19 behaviors.

20 I've spent much of the last two years
21 talking and meeting with people who my dad played with
22 and coached trying to understand really how
23 significant this disease was, is, and how pervasive it
24 is, when do people see the onset of symptoms, what are
25 they like?

1 I didn't believe this whole drama that
2 was surrounding it because I just -- I really learned
3 to kind of find out for myself, you know, and I also
4 interviewed a dozen neurologists, neurosurgeons,
5 neuroscientists, (indiscernible - 2:30:51)
6 neuropsychologists, neuropsychologists outside of the
7 (indiscernible - 2:39:55) group because I really
8 wanted to understand this.

9 And, you know, I would say that
10 (indiscernible - 2:40:00) my question there a thousand
11 Lew Carpenters and I think that's a problem.

12 My father's symptoms would not be
13 covered under this current settlement. He's dead now
14 but I really want to make sure that this is --

15 THE COURT: How long ago did he pass
16 away?

17 MS. CARPENTER: Four years almost
18 exactly. Yeah.

19 The moms become exhausted, they're
20 stretching their breaking point trying to hold it
21 together. Sometimes she's not just the caregiver for
22 the children, she's the primary breadwinner, she's
23 ashamed of what's happening at home, she's socially
24 isolated, she's afraid from the outbursts that are
25 taking place, everybody is walking on egg shells. The

1 children usually blame themselves. And no matter how
2 many people I talk to the stories are frighteningly
3 familiar.

4 You could do an overlay, you could do a
5 grid. I think Elanore was right, when you start to
6 look for it you just -- you see it so starkly it's
7 like it's hard to believe you didn't see it so clearly
8 before.

9 And the final thing I want to say is,
10 you know, I think a lot about what is the job
11 (indiscernible - 2:41:00), what is good enough
12 parenting?

13 The job of a parent is to provide a
14 safe and stable environment for children to reach
15 their developmental milestones in a good enough way.
16 To provide safety, structure, three hots in a cot as
17 my dad used to say. To provide adequate validation,
18 to help kids learn to set goals and provide them with
19 the tools to achieve them, assuming the kids are
20 willing to put in the work. To teach kids how to be
21 moral and ethical human beings and to help them create
22 an internal map. This is primary relationships and a
23 person's life will be fulfilling, safe, and
24 worthwhile. All of this is compromised in a household
25 living with untreated brain injury and CTE.

1 My research has shown me there's much
2 we can do to help men and their families navigate this
3 disease through early intervention, ongoing cognitive
4 behavioral therapy, and drug therapies. These
5 treatments are expensive and lifelong, but they can
6 help these men manage their mood swings, help them to
7 be more present in their lives and their work, and
8 increase their quality of life, including their most
9 intimate relationships.

10 From my perspective the criteria for
11 receiving services related to repetitive brain injury
12 in the case called CTE is not solely about a man's
13 ability to hold down a job. My father was gainfully
14 employed by the NFL for 40 years. I was raised in the
15 NFL, I have three sisters, there are only four girls,
16 everybody I grew up with, the guys called themselves
17 my brothers. We were the daughters, they were the
18 sons. This is everybody I know.

19 It's really important to make sure that
20 we protect the children.

21 THE COURT: Thank you very much. Okay.

22 Jim, would you go outside and just ask if
23 there's a John Erickson? I don't know -- all right?
24 Or the CE can go out. Thanks. You go out and ask if
25 there's a John Erickson. Just one second. And do you

1 need a moment to organize your thoughts for rebuttal?

2 MR. SEEGER: No, we're -- I'm ready.

3 MR. KARP: We're ready.

4 UNIDENTIFIED SPEAKER: We're ready.

5 THE COURT: Oh, okay. One second,
6 let's -- let's -- who's going to go first, have you
7 decided?

8 Mr. Birenboim, you're going to go?

9 MR. BIRENBOIM: Yes, Your Honor.

10 THE COURT: Okay. Just one second.
11 Mr. Birenboim, just one second while -- 'til I make
12 sure that there's no one by that name outside. I
13 don't want to eliminate someone because -- Marshal,
14 just make sure that -- if you don't mind. Thanks.
15 Okay. Thanks so much.

16 Okay. All right. Mr. Birenboim?

17 MR. BIRENBOIM: May I proceed, Your
18 Honor?

19 THE COURT: Absolutely.

20 MR. BIRENBOIM: Good afternoon --

21 THE COURT: Just put the microphone
22 down a little bit if you don't mind. Thanks.

23 MR. BIRENBOIM: This okay?

24 THE COURT: Yeah. And I hear better
25 that way. Yes.

1 MR. BIRENBOIM: Good afternoon, Bruce
2 Birenboim from Paul, Weiss for the NFL.

3 I'm going to spend a few minutes on
4 rebuttal addressing some, but not all, of the issues
5 that were raised by the various objectors, and in
6 particular I want to spend a few minutes on a few of
7 Mr. Molo's comments.

8 We heard a lot statements in Mr. Molo's
9 presentation, a lot of -- not a lot of citation to the
10 medical evidence and the science, and I think as we
11 discussed this morning, Your Honor, this is a science-
12 driven settlement. And rather than the Court hearing
13 my views of Mr. Molo's views, I thought I would just
14 spend a few minutes on the science and why the science
15 supports the reasonableness of the settlement that has
16 been presented to the Court.

17 Mr. Molo basically raised and the other
18 objectors have raised three issues about CTE, that
19 it's not compensated at all, allegedly, that mood and
20 behavior disorders are not compensated, and that the
21 provision for compensation for death with CTE is not a
22 rational exception. All of those I would submit are
23 very rational in the context of this litigation
24 settlement.

25 As Mr. Karp and Mr. Seeger discussed

1 this morning, this is a litigation settlement, so we
2 need to focus on the elements approving the claims in
3 this case and whether they were appropriately
4 compromised.

5 Causation is clearly a key element of
6 any claim in this case.

7 And the question then for the Court is
8 whether -- not whether the settlement is perfect or
9 whether every condition is compensated for, but
10 whether the proposed settlement is fair, reasonable,
11 and adequate given the strengths and weaknesses of the
12 claims.

13 And it's striking that none of the
14 objectors really evaluated the CTE claims in terms of
15 likelihood of success and difficulty of proving CTE.

16 But we have submitted affidavits from
17 Dr. Yaffey (ph) and Dr. Sneider (ph) which addressed
18 that issue, and they have both opined, they are very
19 experienced doctors and psychologists, have both
20 opined that based on the current state of knowledge,
21 the current state of scientific knowledge it would be
22 extremely difficult to prove that football causes CTE
23 or that CTE causes any particular symptoms.

24 The research in this area, it is
25 undisputed, is in its infancy. The National Institute

1 of Health has said that, the Institute of Medicine has
2 said that. There are essentially one or two studies
3 that have studied 200 brains of deceased players and
4 others, and that is really the entirety of the
5 research in this area. It is new, it is far, far, far
6 behind where we are in Alzheimer and Parkinson's, and
7 all of that.

8 In the expert opinions to the effect of
9 the difficulty of proving causation with respect to
10 CTE really is unrebutted. And the -- there have been,
11 Your Honor, no double blind studies, there have been
12 no perspective studies, there have been no cross-
13 sectoral studies, there have been no case control
14 studies. All there have been have been a couple of
15 case studies.

16 The sciences is in it infancy, and this
17 is not a trial, Your Honor, where one side or the
18 other is required to prove that CTE is or isn't a
19 cause of this or that. The question on the table is
20 whether this issue, the issue of causation and CTE,
21 would will hotly contested at trial.

22 There can be no dispute on this
23 scientific record that those -- that issue would be
24 hotly contested, and therefore the issue is simply
25 whether the line drawing was reasonable in the context

1 of the hot dispute there.

2 So what was the resolution in this
3 case? The resolution is that CTE is not per se
4 covered, but the significant symptoms of CTE are
5 covered.

6 And in fact the objectors -- the
7 objectors' own doctors, Dr. Stern and Dr. McKee who
8 performed studies with Dr. Stern, they have found that
9 there are four -- they hypothesize that there are four
10 levels of CTE. And Levels 3 and 4, which coincide
11 with the decline in neurocognitive behavior in
12 dementia, the McKee study found -- and this is in the
13 Yaffey affidavit at paragraph 83 -- that 89 percent of
14 the patients that were studied by Dr. Yaffey had
15 either Level 3 or Level 4. And those levels would be
16 covered by this settlement.

17 So as a factual matter it's just not
18 the case that the principal symptoms of CTE are not
19 covered. They are covered, but the symptoms that are
20 not covered are mood behavior and depression. And it
21 is also undisputed that mood behavior and depression
22 are prevalent in the general population, there are
23 many, many, many, many other causes.

24 The difficulty of proving causation in
25 that case would be extremely difficult, and I would

1 just cite the Court Dr. Sneider's affidavit at
2 paragraph 45. She talks about how for years it was
3 thought that depression was caused by Alzheimer. It's
4 now proven that it's not caused by Alzheimer. This is
5 why you can't assume that there's as causal link.

6 So this settlement draws a line --
7 draws a line at the more significant aspects of CTE,
8 which are covered under the dementia categories, and
9 does not cover mood and behavioral problems.

10 And lastly on this point, and it's a
11 point that's been ignored by all the objectors, the
12 assumption in the objectors' presentation is that
13 there are players who have a certain set of symptoms
14 today caused by CTE that might not be covered, period,
15 as if time doesn't go on and if as those players who
16 may not be covered for mood issues today as if they
17 will not be covered next week or next month or next
18 year if, as is often the case, these conditions
19 progress.

20 So all the players who have CTE may
21 progress into Levels 3 and 4 and be covered by this
22 settlement.

23 The question for the Court in the last
24 analysis is, is the line that was drawn here fair and
25 reasonable given the science? And we think given the

1 causation issues and given the infancy of the research
2 in this area the line was clearly a fair line.

3 Now let me just address for one second
4 the death with CTE point.

5 The settlement covers death with CTE
6 prepreliminary approval precisely because obviously by
7 definition players who have deceased prior to
8 preliminary approval cannot get a qualifying diagnosis
9 and be covered.

10 So the coverage for death with CTE
11 prepreliminary approval was an expansion of the
12 settlement so those players who had CTE and were
13 deceased were covered. So it expanded coverage for
14 those people and it also demonstrates that their
15 interests were in fact being looked after.

16 I mean if it were in fact the case, as
17 some of the objectors have alleged, that there was no
18 one at the table looking after the CTE -- players who
19 had CTE then you wouldn't have that provision. That
20 provision there would you describe to protect pre-
21 deceased CTE death with CTE before preliminary
22 approval.

23 Let me address for a second the science
24 issue.

25 Mr. Molo and other objectors have made

1 the point that the science of CTE is changing and it
2 may be that in five or ten years we will be able to
3 diagnose CTE pre-death. Now you can only diagnose it
4 post-death. That actually doesn't change anything
5 about the settlement, Your Honor, it doesn't affect
6 the settlement, because as the Court knows the purpose
7 of the settlement is to compensate for actual
8 manifested cognitive impairment. If we could -- if we
9 could determine today that a certain protein
10 associated with CTE was in the brain but there were no
11 cognitive impairments there would be no compensation.
12 That's the entire theory of the case. It's to
13 compensate players who have cognitive impairments.

14 So if a test were developed tomorrow
15 showing CTE that would not change the outcome
16 whatsoever. And in this respect Dr. Sneider in
17 paragraph 44 of her affidavit notes that a third of
18 older persons post-death, the pathology shows that
19 they have full Alzheimer in their brains with no pre-
20 death symptoms whatsoever.

21 The purpose of the settlement is not to
22 compensate protein in the brain or not to compensate a
23 particular structure, it's to compensate cognitive
24 impairment.

25 And just as a side note there's nothing

1 in Amchem, Your Honor, that requires that an agreement
2 change over time. The issue in Amchem was whether the
3 interests of the futures, the people in the class who
4 had not yet developed any symptoms, were protected,
5 and in this case we have a subclass that protects
6 those interests.

7 I have no further comments, Your Honor.
8 I think Mr. Karp has a few comments.

9 MR. SEEGER: Thank you, Your Honor. I
10 just wanted to, you know; in some respects maybe add
11 on to what was just caught into. You know, Mr. Molo
12 very confidently stood up here and said to Your Honor,
13 we know that suicidality is related to CTE. And he
14 speaks about CTE like he has confirmation.

15 So let's just play a little bit of a
16 game for a second, and I know this isn't the game.
17 But let's imagine that we were at a trial, because
18 Mr. Molo and I know he doesn't -- he's never handled a
19 PI case, a personal injury case and has never tried
20 one. But I just want him to understand what he would
21 be confronted with when puts his own experts on the
22 stand. He has two experts he continues to talk about,
23 Dr. Stern and Dr. Gandy.

24 And this is what Dr. Stern said.
25 Dr. Stern is an author. He's the lead author on this

1 study. He says, "There is no epidemiological cross-
2 sectional prospective studies of CTE that currently
3 exist." That was Dr. Stern's opinion in 2013. I
4 don't know if that's in his affidavit. But I can go
5 back and check.

6 Dr. Gandy acknowledges however there
7 have no prospective studies in clinical and
8 neuropsychological characterization of CTE is yet to
9 be properly developed.

10 So, Your Honor, in the context of a
11 Daubert hearing this is some of the things, the
12 writings of the experts that Mr. Molo has put forward,
13 the things that you'd be asked to decide whether a
14 jury could hear that CTE is a disease and causes
15 suicidality and these other things.

16 THE COURT: You're saying to me -- am I
17 understanding to say that if the plaintiffs were to
18 try their case, they would be facing a Daubert Hearing
19 where you're challenging whether or not I'd even allow
20 CTE to be in?

21 MR. SEEGER: I invited him to -- I was
22 prepared to try that case in front of Your Honor.
23 It's Mr. Molo who comes in here leading Objectors and
24 convincing them and others that we have failed to
25 compensate or do something in the settlement.

1 We failed to compensate CTE, which Mr.
2 Birenboim has just done a great job explaining why
3 he's wrong on that. But I think he needs to
4 understand that his own experts -- that Mr. Molo did
5 not point these sections out. I'm pointing them out
6 because this is the published literature that his own
7 experts will put their names on. This isn't in their
8 affidavits necessarily, but this is what they say in
9 their published literature that goes out to the
10 medical community.

11 Dr. Gandy, "We have little idea,
12 however of the risk of developing CTE following
13 carotid brain injury. We have little idea of the risk
14 of developing CTE" -- which their full objection --
15 "following a traumatic brain injury, a concussion, for
16 example."

17 Dr. Stern, 2014, "There are no
18 objective validated in vivo by in large with CTE.
19 Another way of saying we can't determine whether it's
20 in living people.

21 And finally and maybe most importantly,
22 Dr. Stern in 2011 agrees with this settlement although
23 he doesn't say it in his affidavit. Maybe Mr. Molo
24 should have paid him.

25 It says, "the differential diagnosis of

1 CTE often include that's Alzheimer's and frontal
2 temporal dementia, although a history of remote head
3 trauma may be suggested of CTE, head trauma" -- this
4 is very important, Judge -- "has been implicated as a
5 risk factor for Alzheimer's, Parkinson's disease, ALS,
6 and other neurodegenerative diseases." That's what we
7 compensated in settlement, Your Honor.

8 I just wanted to spend a moment if I
9 could -- that I was going onto the notices
10 (indiscernible).

11 UNIDENTIFIED SPEAKER: Sure.

12 MR. SEEGER: Well, but, just one quick,
13 I mean just the one because I think this may help Mr.
14 Lubel who didn't read the language on the slide that
15 said that those numbers were averages, those payouts.

16 We also in Mr. Vasquez's affidavit for
17 this case, he talks about the reason for the
18 differences that are in the grid with the lower
19 payments after a certain age. And just by way of
20 example, and I'm not going to spend time on this,
21 Judge, because everybody can go and read the
22 affidavits.

23 After 75 years a person is 302 times
24 more likely to develop dementia after that age.
25 That's a much higher risk factor than anybody has ever

1 attributed to concussions or anything else.

2 Finally, just a couple points on the
3 notice because Mr. Molo wanted to use -- and this has
4 nothing to do with Mr. Eric Williams who I respect and
5 I respected every word he said. But Mr. Molo wanted
6 to use Mr. Williams's objection as a reason for
7 showing why the notice wasn't good. The only problem
8 Mr. Molo has is that we received Mr. Williams's
9 objection on July 3rd, 2014, two months before the
10 notice went out. So that's a little bit of a problem.

11 And then with regard to the notice,
12 just a couple of last points. Again, this -- there's
13 nothing that has been more advertised in the press
14 everywhere than the notice in this case.

15 Mr. Molo was critical of the summary
16 notice. This is a summary notice. Mr. Molo is a
17 lawyer. He understands what this means. He
18 understands that at the very bottom it tells everybody
19 to go look at the website where to register for
20 benefits and what number to call if you have
21 questions. It also indicates that there's a
22 settlement agreement. People can get the settlement
23 agreement.

24 But then he goes on to criticize the
25 long form notice and he says that we only mention the

1 fact that in the long form notice that there was death
2 with CTE prior to July of 2014.

3 Well, the problem that he has there
4 besides the legal issue which I'll go into is the
5 summary notice makes it very clear under the section
6 entitled "What are the benefits of the settlement?"
7 That's the section. Right under there it says
8 monetary awards for diagnosis of death with CTE prior
9 to July 7, 2014. I think if you're reading the
10 notice, the section if you want to know what your
11 benefits are, you're probably going to go to the
12 section that says, what are the benefits of the
13 settlement? The notice does that. And then, finally
14 the last legal --

15 THE COURT: Say that again. What are
16 -- refresh my memory on that.

17 MR. SEEGER: There is Section 5 of the
18 long form notice. It is entitled, "What are the
19 benefits of the settlement?"

20 THE COURT: Okay. Read it slow.

21 MR. SEEGER: Section 5, What are the
22 benefits of the settlement? And below that in the
23 second bullet point, the very first sentence,
24 "Monetary awards for diagnosis of death with CTE prior
25 to July 7th, 2014." It's right there in the notice.

1 And there is a legal presumption. And it's in re:
2 Domestic Air Antitrust litigation that there's a
3 presumption that the notices are read in their
4 entirety, Your Honor.

5 That's all I have at this point unless
6 you have any questions of me.

7 THE COURT: No. No, I'm -- I frankly
8 read we have an MDL -- an MDL website and I -- before
9 I helped draft this notice, because I thought that was
10 my notice too.

11 MR. SEEGER: I know that.

12 THE COURT: I read them and I thought
13 that this one was very specific. I mean if anyone
14 wants to review them, they ought to review all the
15 others.

16 MR. SEEGER: Yeah. It would be helpful
17 to actually read all the sections. Thank you.

18 THE COURT: Yeah. Okay. Thank you.
19 You have anything further, Mr. Karp?

20 MR. KARP: I know -- I know you had a
21 question for me so I'm clearly going to stand up and
22 answer that question.

23 THE COURT: Okay.

24 MR. KARP: On the -- just on the notice
25 point, just because there was a lot highfalutin

1 rhetoric flowing from one of the objectors who
2 described the long form notice as slick.

3 THE COURT: Wow. I've never been so
4 flattered.

5 MR. KARP: Yeah. All I would say --

6 THE COURT: Because I wrote a lot of
7 it.

8 MR. KARP: If slick means accurate and
9 comprehensive, I think the long form notice was very
10 slick indeed. You had a couple of questions regarding
11 how the security --

12 THE COURT: Oh, yeah.

13 MR. KARP: -- work and I know
14 Mr. Utecht spent some time expressing concern would
15 the money --

16 THE COURT: Which I appreciated.

17 MR. KARP: -- be there, which I
18 appreciated as well. Maybe it makes sense for me to
19 spend two minutes just to go through the structure of
20 how the security is set up in the settlement. And in
21 doing so we were aided significantly by Mr. Golkin,
22 the court appointed special master, who found it
23 within his province and Your Honor directed to make
24 sure the economics and financial aspects of this
25 settlement work. And not that they work for five

1 years or ten years, or 20 years, but they be
2 structured so as to work for the entire 65-year
3 duration of the settlement.

4 And we spent hours and hours and weeks
5 and in fact probably months with Mr. Golkin going
6 through different formulations and different
7 structures until we and Mr. Seeger had satisfied him
8 that the economic structure of this settlement worked,
9 was sensible, and would protect claimants and class
10 members like Mr. Utecht.

11 The way this structure works is that
12 during the first ten years of the settlement, the NFL
13 is obligated to pay claims as they are approved by the
14 settlement claims administrator. There has been
15 widespread public criticism of the settlement by the
16 Objectors and certain folks in the media that the
17 settlement is too inexpensive because the NFL
18 allegedly is awash in money, whether it's from
19 broadcast deals, sponsorship arrangements, or other
20 forms of revenue.

21 The criticism is the NFL has so much
22 money at its disposal; it should be paying a lot more
23 in the settlement. That position advocated by some
24 of the Objectors and the media obviously is
25 inconsistent with the concern that the NFL will not

1 have the financial wherewithal during years one
2 through ten to pay claims as they come due. So that's
3 point number one.

4 The way that we structured the
5 settlement with Mr. Golkin's assistance is that the
6 NFL is obligated after year ten to set up a statutory
7 trust which is intended to have sufficient funds to
8 pay all remaining expected claim for the remaining 55-
9 year life of the settlement. And that statutory trust
10 in theory will millions and millions and millions of
11 dollars. We will have ten-year track record of having
12 seen what claims have been approved by the claims
13 administrator up to that point and we will be able to
14 make reasoned assumptions going forward.

15 Now, Your Honor adverted to a belt and
16 suspender aspect of the settlement from years 10 to
17 year 65 which is absolutely accurate. Entirely
18 independent of the statutory trust, the NFL at all
19 times --

20 THE COURT: Uh-huh.

21 MR. KARP: -- from the moment this
22 settlement becomes effective until 65 years later; the
23 NFL has an independent obligation under the settlement
24 agreement to pay every single claim that is approved
25 by the claims administrator on a timely basis. And

1 that is an obligation that has tremendous teeth behind
2 it.

3 If the NFL fails to pay a claim, or
4 defaults on a claim, for whatever reason, Your Honor
5 or whoever succeeds Your Honor in superintending this
6 settlement will have the ability to nullify the class-
7 wide release that flows to the NFL. So every
8 claimant, every class member who has not received
9 payment will then be able to return to the tort system
10 and continue the litigation against the league.

11 So the NFL has funds now, will have
12 funds in years 10 through 65 and in the event the NFL
13 ever were to default, the punishment for such a
14 default is draconian, and I hope that satisfies Your
15 Honor and I certainly hope it satisfies Mr. Utecht and
16 those in a position like Mr. Utecht.

17 The only other point I'd like to make
18 -- there was a lot of discussion by the Objectors and
19 the --

20 THE COURT: That was the solution in
21 the Fen-Fen litigation, I believe.

22 MR. KARP: It was, Your Honor. And in
23 factually in other mass tort class action settlements
24 as well. We've put a lot of discussion by the
25 Objectors and by certain of the players or players'

1 representatives that they would like the settlement to
2 be more generous in this regard.

3 They'd like the claims covered whether
4 physical or psychological to be broader. That, as
5 noted earlier, is true in every settlement. We
6 respect the objections. We listened to the objections
7 with great care. But there is compromise. There is
8 laundering. This is the settlement of a litigated --
9 a case that would be litigated and we have very strong
10 defenses as adverted to.

11 I'd like to close if I may just by
12 referring very briefly to a couple of statements that
13 Ms. Hawkins and Ms. Perfetto made just a couple of
14 moments ago. Ms. Hawkins who spoke so eloquently on
15 behalf of her husband, Ross, said, I just wish that
16 testing was in place years earlier. I wish it were
17 possible to have diagnosed my husband years earlier
18 because there are things that could have been done
19 medically to help assuage some of the conditions and
20 difficulties that he faced and that the family faced
21 as a result.

22 One of the aspects of this settlement
23 that the NFL is very proud of is the BAP program, the
24 baseline neurocognitive testing program. The whole
25 purpose behind that program, Your Honor, is to ensure

1 that the 22,000-plus retired NFL players will receive
2 the moment this settlement becomes effective,
3 neurocognitive testing. That they will understand
4 their neurocognitive impairment level if, in fact,
5 they're impaired.

6 A baseline will be set so that if they
7 are tested in the future, trajectories and trends will
8 be able to be noted. And to the extent they have
9 early neurocognitive impairment; under the program
10 they will receive treatment. They will receive
11 therapy. They will receive medicine. And I'd like to
12 believe that Mr. Hawkins would have benefited from
13 such a program being in place that Ms. Perfetto's late
14 husband would have benefited from such a program being
15 put in place. It is an important aspect of this
16 settlement.

17 And the only other point I'd like to
18 add is Mr. Hawkins is receiving disability benefits
19 under the EDA disability plan provided by the NFL.

20 One of the issues in our settlement
21 negotiations with Mr. Seeger and the Plaintiffs'
22 Steering Committee was do we allow players to continue
23 to receive those disability and medical benefits or do
24 we somehow structure the settlement in a way that
25 provides an offset or a reduction in any monetary

1 compensation awards?

2 And this was another example, Your
3 Honor, in which the League very much wanted to do the
4 right thing or try to do the right thing on behalf of
5 its retired players. The League agreed not to seek
6 any offset or reduction, but to allow the players who
7 are receiving monies and other benefits under the
8 League's current disability plans also to receive
9 benefits under this settlement under the monetary
10 award compensation program.

11 The League really is proud of this
12 settlement. We appreciate the patience that Your
13 Honor has displayed not just today, but over the past
14 several years in putting up with the parties. And
15 thank you very much for your attention.

16 THE COURT: Thank you. Okay. All
17 right.

18 MR. SEEGER: Just one very -- one last
19 point. It will be made in two minutes, Judge, if my
20 partner, Mr. Buchanan, can just address the point that
21 Mr. Wiegand made about the baseline testing. It will
22 two minutes.

23 THE COURT: That's what -- that's what
24 I wrote down.

25 MR. SEEGER: It's a two-minute point.

1 THE COURT: Okay.

2 MR. BUCHANAN: Thank you, Your Honor.

3 THE COURT: Okay. Let me hear from
4 you.

5 MR. BUCHANAN: Thank you, Your Honor.

6 THE COURT: One second. We have some
7 -- is that computer -- oh, you're going to do the old
8 fashioned?

9 MR. BUCHANAN: Old fashioned. Old
10 school.

11 THE COURT: Oh. Okay. What is it, we
12 have to -- Bill, make sure you put on the
13 (indiscernible). Yeah. Okay.

14 MR. BUCHANAN: Is there a mic here as
15 well?

16 UNIDENTIFIED SPEAKER: Yes.

17 MR. BUCHANAN: Thank you. Can you help
18 me focus that?

19 THE COURT: No. Where's? Okay.

20 MR. BUCHANAN: Your Honor, there was an
21 article that was shown and we discussed earlier today.
22 It was the work of Dr. McGee and Stern and others
23 concerning CTE. And you have the comments obviously
24 of Mr. Seeger and Mr. Birenboim as well as the
25 affidavits.

1 What I wanted to address in the context
2 of the BAP is there's an argument that the BAP,
3 obviously, isn't evaluating some of the core symptoms
4 that have been reported in connection with CTE.

5 I did want to highlight something
6 that's interesting in this article, and I'm sorry for
7 the page list. We'll get to the relevant page. It's
8 right here and this is a chart where -- actually, can
9 you zoom out, please, PJ? Thank you. Or is that me
10 doing it?

11 PJ: No that's Mr. Jones doing that for
12 you.

13 MR. BUCHANAN: Oh, thank you, Mr.
14 Jones. Could you actually pull out a little bit?
15 Okay. There we go. It's going to be hard to read,
16 but the highlighted columns and it -- on the left;
17 Stage 1 CTE, Stage 2 CTE, Stage 3 CTE, Stage 4.

18 What I wanted to highlight are these
19 points that I've already highlighted before I got up
20 here, Your Honor; Attention, Executive Function,
21 Memory, Language, and Visual Spatial. Those are
22 cognitive domains that are evaluated through the BAP
23 and actually inform whether somebody could be a Level
24 1, a Level 1 and a half, or a Level 2 in terms of the
25 neurocognitive impairments.

1 It was interesting to follow the -- you
2 can see, you know, by the plus signs in the columns --

3 THE COURT: Where are you getting this
4 from?

5 MR. BUCHANAN: Yeah, this is the 2013
6 publication by Dr. McKee and I think Dr. Stern is also
7 coauthor.

8 THE COURT: Oh, that's that -- that was
9 the -- those are Ms. Molo's. Okay. That's it.

10 MR. BUCHANAN: Yeah, I think it was
11 within his deck and I think he drew data from this
12 where he talked about the staging of CTE.

13 THE COURT: Yeah.

14 MR. BUCHANAN: There's another column
15 off to the right. And, Mr. Jones, I don't know if you
16 can zoom in on the dementia column. And what you see
17 is actually -- that's going to be a little hard.

18 So up top it says dementia and as you
19 scroll down you see with great frequency, obviously,
20 it greater and later stages of CTE Stage that's been
21 reported is Stage 3 and Stage 4, dementia as being a
22 very common and frequent -- frankly, I think there was
23 only patient perhaps that didn't have a diagnosis of
24 Dementia Phase 3 and 4.

25 THE COURT: They actually said that.

1 They actually said -- I noticed that. When I read
2 those articles that they did actually mention that in
3 it that except in very rare circumstances everybody
4 had history. Remember, this was all history as I
5 understood it.

6 MR. BUCHANAN: It is. These are case
7 series, Your Honor. They're based on really, I think,
8 a sample that would be self-selected or perhaps even
9 argued by the defense as biased. But nonetheless, the
10 symptoms have been documented in the research.

11 But what's interesting is the BAP
12 actually is picking up the cognitive domains that have
13 been specifically assessed.

14 And you saw even in Level 1 --
15 actually, Mr. Jones, could I show it again real quick?
16 Because it's even more common -- well, it's going to
17 be harder for me find the page. It's even more common
18 at Stage 1 and Stage 2 CTE to see reports of
19 complaints either in a 1-plus sign or a 2-plus sign in
20 those five cognitive domains and some of the other
21 things that have been reported.

22 So you see, you know, persistent
23 cognitive impairments that have been associated in
24 these familial reports in the literature with what's
25 subsequently diagnosed as CTE.

1 Getting specifically to the BAP design, the
2 B-A-P design, we have a lot of acronyms in the
3 courtroom today. But the design of the BAP, this
4 wasn't designed by lawyers.

5 It was designed, frankly, by scientists who
6 we consulted with as part of our negotiations and
7 trying to get baseline assessments of the players.
8 And we worked with people who designed batteries and
9 do this. This was not unscientific and I heard that
10 argument today, that this was really just some
11 scattershot approach to testing former players.

12 In fact, 16 of the 22 tests that are in
13 the BAP -- there's 22 tests in the battery we run
14 designed to test those various domains. And then
15 there's also some supplemental ones that are for
16 screening and for the benefit of players and their
17 families.

18 But 16 of the 22 tests are relied upon,
19 frankly, in the literature cited by the Objectors and
20 by Dr. Stern and his publication in looking at
21 cognitive impairments in MCI, mild cognitive impaired
22 people, and dementia. The pool is 16.

23 And then the question of the quarter
24 maybe others might be well why, you know, why did you
25 add the other six? Why did you go beyond that?

1 One of the challenges we had as
2 counsel, frankly, in the scientists in trying to
3 design something that could be applied throughout the
4 country for a player base that may be diverse both by
5 age, racially, demographics, education, et cetera is
6 having good normative data.

7 In other words, a player comes in and
8 takes a test, but what do we evaluate that score
9 against? Do we have population sample that we can
10 compare that to, to evaluate whether the player has
11 truly declined or whether maybe they're just -- have
12 they truly declined where they should have been
13 relative to their pre-morbid or Pre-NFL function?

14 So you want to consider people in that
15 context. And what the experts did was identify tests
16 that had good normative data samplings so that we
17 could make correct comparisons and appropriate
18 comparisons.

19 And this was done scientifically. It
20 was done on the basis of empirical data. It was done
21 and supported by the literature, and it was done,
22 obviously, with one of our experts, Dr. Kelp, who's
23 designed test batteries for the military. I think he
24 designed a battery that screened 50,000-plus military
25 personnel pre-battle, obviously, in connection with

1 them being enlisted.

2 Dr. Grant Iverson whose work has been
3 published in reference text books that's cited
4 throughout the affidavits. I'd encourage Your Honor
5 actually to look if you have a question about the
6 scientific backing behind the BAP.

7 You can look at the declarations that
8 were submitted of Dr. Kelp. You can also look at the
9 literature cited therein. And you can also look at
10 Dr. Hamilton, a doctor who was not involved in the
11 creation of the BAP, who evaluated it though from the
12 perspective of a practicing neuropsychologist who also
13 says they are sound scientific methods, empirical
14 principles that underline the BAP. Thank you.

15 THE COURT: Thank you, very much.
16 Okay. A couple of -- let me see three lawyers at
17 sidebar, please. Not three, it can be six, seven, I
18 don't care whatever it is.

19 (Sidebar under seal)

20 (Conclusion of requested excerpt at 3:22 p.m.)

C E R T I F I C A T E

I do hereby certify that I am a Court
approved transcriber and the foregoing
testimony is a true and correct transcript
from the official electronic sound recording
of the proceedings in teh above entitled
matter.

Dated: _____


Dawn South

Approved Transcriber

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November 19, 2014 Fairness Hearing Demonstrative Slides Presented By Counsel for the Morey Objectors

In re NFL Concussion Injury Litigation,
No. 2:12-md-2323 (E.D. Pa.)

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Civil Action No. 2:14-cv-00029-AB

Plaintiffs,

V.

National Football League et al.

Defendants.

Objections to Class Action Settlement



Denial of Final Approval Is Appropriate Where:

“[T]he settlement treats ‘similarly situated class members differently’”

OR

“[T]he settlement releases ‘claims of parties who received no compensation in the settlement’”

Ehrheart v. Verizon Wireless, 609 F.3d 590, 604 (3d Cir. 2010)
(quoting Manual for Complex Litigation, Fourth, § 21.61)

Class Action Settlement Agreement

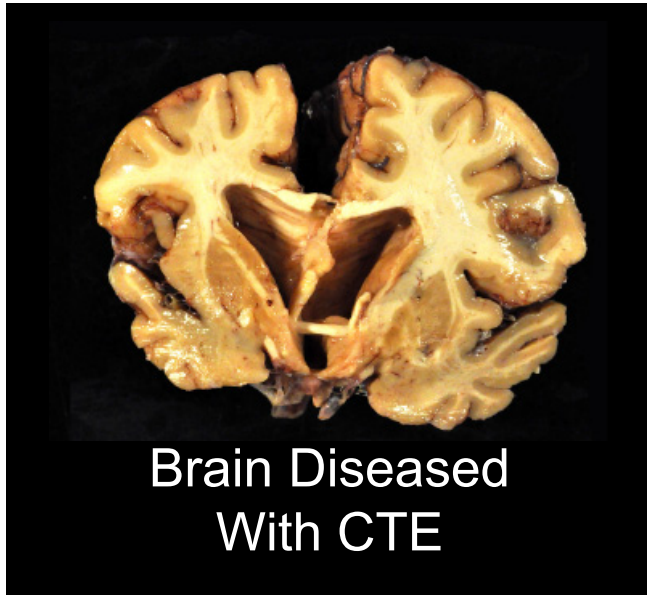
Section 18.1 Releases

(a) ...

hereby
waive and release, forever discharge and hold harmless the Released Parties, and each of
them, of and from any and all past, present and future claims ...

(ii) arising out of, or relating to, head, brain and/or
cognitive injury, as well as any injuries arising out of, or relating to, concussions and/or
subconcussive events ...

(iv) arising out of, or relating to, CTE; and/or



What is CTE?

Progressive degenerative brain disease

In people who suffered repetitive brain trauma (concussive and sub-concussive)

Objectors' Experts

Dr. Gandy Decl. ¶ 4

Agreed

Dr. Hovda (Class Cnsl.) Decl. ¶ 19

What is CTE?

A brain with CTE shows **tau tangles** in certain locations and patterns

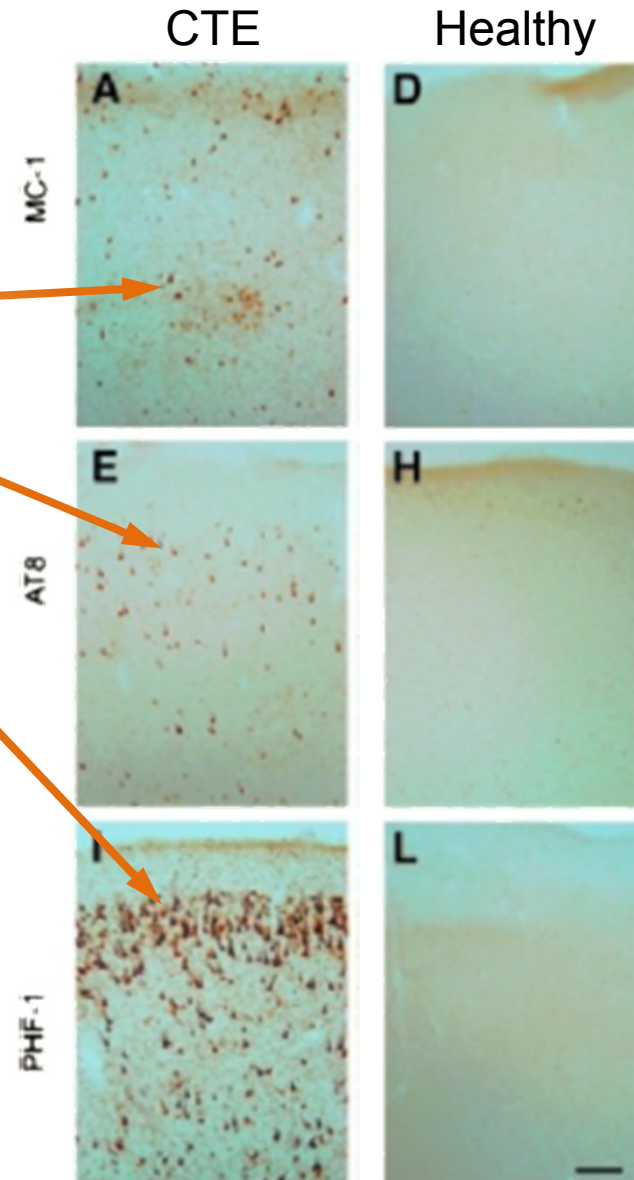
A healthy brain does not

Objectors' Experts

Tau protein builds up in the brain in a specific pattern that is unique to CTE. (Dr. Gandy Decl. ¶¶ 4, 15)

Agreed

Scientists diagnose CTE by “determin[ing] if something called the ‘tau protein’ is present and in a particular pattern....” (Dr. Yaffe (NFL) Decl. ¶ 55)



What is CTE?

In contrast to Alzheimer's, Parkinson's, and ALS, CTE *requires* repetitive head trauma

"The Industrial Disease of Football"

Objectors' Experts

Dr. Gandy Decl. ¶ 4

Agreed

Dr. Hovda (Class Cnsl.) Decl. ¶ 19

What is CTE?

definitive diagnosis - post mortem
(but lack of precision in diagnosing other neurological diseases in the living)

Objectors' Experts

Dr. Stern Decl. ¶ 36

Dr. Gandy Decl. ¶ 15

Agreed

Dr. Schneider (NFL) Decl. ¶¶ 22, 42

What is CTE?

Within the next five to ten years, there will be highly accurate, clinically accepted methods to diagnose CTE during life

Objectors' Experts

Dr. Stern Decl. ¶ 38

Agreed

Dr. Hovda (Class Cnsl.) (quoted in Jane Leavy, *The Woman Who Would Save Football*, Grantland (Aug. 17, 2012), <http://grantland.com/features/neuropathologist-dr-ann-mckee-accused-killing-football-be-sport-only-hope>)

What is CTE?

| STAGE I | STAGE II | STAGE III | STAGE IV |
|-------------------------------------|-------------------------------------|-------------------------------------|--|
| Short-term memory difficulties | Short-term memory loss | Memory loss with mild dementia | Severe memory loss with dementia |
| Executive dysfunction | Executive dysfunction | Executive dysfunction | Executive dysfunction |
| Loss of attention and concentration | Loss of attention and concentration | Loss of attention and concentration | Profound loss of attention and concentration |
| Explosivity / aggression | Explosivity / aggression | Explosivity / aggression | Explosivity / aggression |
| Suicidality | Suicidality | Suicidality | Suicidality |
| Headaches | Headaches | Headaches | Depression |
| | Mood swings or depression | Mood swings or depression | Impulsivity |
| | Impulsivity | Impulsivity | Language difficulties |
| | Language difficulties | Language difficulties | Visuospatial difficulties |
| | | Visuospatial difficulties | Apathy |
| | | Apathy | Paranoia |

Source: McKee et al. 2013 (Nitz Decl. Ex. 5)

NFL Causes CTE: Class Allegation

Case 2:14-cv-00029-AB Document 1 Filed 01/06/14 Page 1 of 80

FOI

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' INJURY LITIGATION

Kevin Turner and Sha
on behalf of themselves
others similarly situated
Plaintiffs,

v.

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,
Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

The NFL Knew the Dangers and Risks Associated with Repetitive Head Impacts and Concussions

89. For decades, the NFL has been aware that multiple blows to the head can lead to long-term brain injury, including but not limited to memory loss, dementia, depression, and CTE and its related symptoms.

PLAINTIFFS' CLASS ACTION COMPLAINT

NFL Causes CTE: Science



2013 Published Study in BRAIN Journal
34 of 35 deceased professional
players diagnosed with CTE

2014 Research Update
76 of 79 deceased NFL
players diagnosed with CTE

NFL Causes CTE: Opinion of Class Counsel

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OUR FILM

Multiple medical studies have found direct correlation between football concussions and suffering from symptoms of chronic traumatic encephalopathy, also known as CTE. CTE is believed to be the most serious and harmful disease that results from NFL and concussions. CTE is a progressive

Up-to-Date Information on NFL Football Concussions

After years of denying the scientific evidence that links repeated football concussions with long-term brain damage, the NFL is currently in the hot seat. A flood of multi-district NFL lawsuits are finally making this powerful organization take notice.

As Plaintiffs' Co-Lead Counsel, we deeply care about this topic—and about keeping the public up-to-date on the latest findings and pursuit of justice. We encourage those of you who would like to simply stay abreast of this volatile topic or those who want helpful information for a possible lawsuit, to bookmark this page.

concussion-related disease?

Free Case Evaluation

Recipient of The National Law Journal's
Plaintiffs Hot List

Full Name

Post-July 7, 2014 Award For CTE —————→ **\$0**


Seeger Decl. ¶ 37
NFL Brief p. 78

Compensation for Dementia ≠ Compensation for CTE

Death with CTE
Before July 7, 2014

CTE

Stage 1
Stage 2
Stage 3
Stage 4



\$4 million

Death with CTE
On or After July 7, 2014

CTE

Stage 1
Stage 2



\$0

Stage 3
Stage 4



Claims
Process

– ? – Dementia 1.5 → \$1.5 million
– ? – Dementia 2.0 → \$3 million

INTRACLASS CONFLICT

Denial of Final Approval Is Appropriate Where:

Class representatives fail to “fairly and adequately represent the interests of the class.”

Fed. R. Civ. P. 23(a)(4)

The “linchpin of the adequacy requirement is the alignment of interests and incentives between the representative plaintiffs and the rest of the class.”

*Dewey v. Volkswagen
Aktiengesellschaft*, 681 F.3d
170, 183 (3d Cir. 2012)

Representative plaintiffs do not allege:

- ▶ Have or at risk of having CTE
- ▶ Played in NFL Europe
- ▶ Subject to TBI/Stroke Set-Offs

Rights bargained away

Intraclass Conflict: Unequal Compensation for Equal Condition – CTE

Death with CTE (stages I-IV)
before July 7, 2014 → \$4 million
(max)

Death with CTE (stages I-IV)
on or after July 7, 2014 → **\$0**

Intraclass Conflict: Unequal Compensation for Equal Exposure – NFL Europe

Operated by NFL 1991-1992, 1995-2007

Same rules

Same equipment

Same players



Morey Declaration

Heimburger Declaration

Intraclass Conflict: Unequal Compensation for Equal Exposure – NFL Europe



3+ Games on Active Roster



1 Eligible Season

8+ Games on Developmental Squad



0.5 Eligible Season



10 Game Season



0 Eligible Seasons

Both NFL and NFL Europe players release all claims

Intraclass Conflict: Unequal Compensation for Equal Exposure – NFL Europe

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL
FOOTBALL LEAGUE
PLAYERS' CONCUSSION
LITIGATION

Kevin Turner and
others similarly
situated

Plaintiffs,

v.

National Football
League Properties,
successor-in-interest
of NFL Properties,

Defendants.

THIS DOCUMENT
RELATES TO ALL
ACTIONS

16. ... I also asked that counsel explain the rationale underlying the treatment of seasons played by class members in NFL Europe. I believe as well that the parties should consider modifications to the settlement agreement to address the NFL Europe issue.

93. Several objectors complain that the settlement does not include time in NFL Europe in calculating eligible seasons for monetary awards.¹⁴⁰ It is my belief that the parties should consider modifications to the settlement to address this issue.

DECLARATION OF ROBERT H. KLONOFF RELATING TO THE PROPOSED CLASS SETTLEMENT IN THE NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION

Klonoff (Class Cnsl.) Decl.
¶¶ 16, 93

NOTICE

Class Counsel's Notice Statistics Are Misleading

78% of the 65,000 people who visited the website **looked only at the first page**

The average viewer looked for **a minute or less**

Brown Decl. Attachment 7

Short Form Notice

NFL Concussion Settlement

All Valid Claims of Retired NFL Football Players to be Paid in Full for 65 Years
Monetary Awards, Baseline Medical Exams and Other Benefits Provided

Who is
included in the
Settlement?

What does the
Settlement
provide?

The NFL and NFL Properties have agreed to a class action Settlement with retired players who sued, accusing them of failing to warn of and hiding the dangers of brain injury associated with playing football. The Settlement does not establish any wrongdoing on the part of the NFL or NFL Properties.

The Settlement Class generally includes all retired players of the NFL, AFL, World League of American Football, NFL Europe League and NFL Europe League, retired players of the NFL, AFL, World League of American Football, NFL Europe League and NFL Europe League.

The Settlement

- Base salary
- Medical expenses
- Lost wages
- Emotional distress

How can I

You will receive
Settlement funds
or a check by the
registered agent

Retired players

What

You will receive
Settlement funds
or a check by the
registered agent

benefits under the Settlement. If you stay in the Class, you may object to the Settlement by **October 14, 2016**.

The Court will hold a hearing on **November 19, 2016** to consider whether to approve the Settlement. You do not have to attend. However, you and/or your own lawyer may attend and request to speak at the hearing at your own expense. At a later date, the attorneys will ask the Court for an award of attorneys' fees and reasonable costs. The NFL and NFL Properties have agreed not to oppose or object to the request if the request does not exceed \$112.5 million. The money would be paid by the NFL and NFL Properties in addition to the payments described above.

Please Share this Notice with Other Players and Their Families

For More Information and to Register for Benefits:
1-855-697-3485 or www.NFLConcussionSettlement.com

What does the Settlement provide?

The Settlement provides money for three benefits:

- Baseline medical exams to determine if retired players suffer from neurocognitive impairment and are entitled to additional testing and/or treatment (\$75 million),
- Monetary awards for diagnoses of ALS (Lou Gehrig's disease), Alzheimer's Disease, Parkinson's Disease, Dementia and certain cases of chronic traumatic encephalopathy or CTE (a neuropathological finding) diagnosed after death. The maximum monetary awards range from \$1.5 million to \$5 million depending on the diagnosis. All valid claims will be paid in full for 65 years; and
- Education programs and initiatives related to football safety (\$10 million).

Long Form Notice

NFL Concussion Settlement Benefits and Legal Rights

14. WHAT DIAGNOSES QUALIFY FOR MONETARY AWARDS?

Monetary awards are available for the diagnosis of ALS, Parkinson's Disease, Alzheimer's Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) or Death with CTE (the "Qualifying Diagnoses"). A Qualifying Diagnosis may occur at any time until the end of the 65-year term of the Monetary Award Fund.



Long Form Notice

NFL Concussion Benefits and Le

| QUALIFYING DIAGNOSIS | MAXIMUM AWARD AVAILABLE |
|--|-------------------------|
| Amyotrophic lateral sclerosis (ALS) | \$5 million |
| Death with CTE (diagnosed after death) | \$4 million |
| Parkinson's Disease | \$3.5 million |
| Alzheimer's Disease | \$3.5 million |
| Level 2 Neurocognitive Impairment (i.e., moderate Dementia) | \$3 million |
| Level 1.5 Neurocognitive Impairment (i.e., early Dementia) | \$1.5 million |

Christopher Seeger Quotes

“CTE is not a relevant marker for anything in this settlement. It’s the symptoms — if you have all the symptoms that are related to CTE, or the diseases that are related, like dementia and Alzheimer’s and ALS, then that determines it. . . . If a player thinks he has any symptoms of it, that’s the very reason to stay in the deal.”

Christopher Seeger quoted in
SportingNews (July 14, 2014)

Proposed Revisions for a Fair and Adequate Settlement

NOTICE

Re-notice class with clear, consistent, and accurate language

NFL EUROPE

Give credit for play

NON-NFL TBI/STROKE OFFSETS

Reduce to a reasonable, evidence-based percentage

CTE

Include compensation for **CTE** for death after July 7, 2014

Include compensation for **CTE** while living once reliable tests are developed

Treat all symptoms of **CTE** – stages I - IV

Or – eliminate **CTE** from the release

Impediments to Fair Recovery

- X** Opt in within 180 days
- X** Baseline Assessment Program test within two years
- X** Claim Package within two years of receiving a qualifying diagnosis
- X** Asymmetric appeals process

The Baseline Assessment Program

Capped at \$75 million

Ends in 10 years, subject to a 5-year extension

Does not compensate CTE

Class Cnsl. Br. (p. 70): "main goal" of BAP to provide baseline assessments, not provide medical treatment

Impediments to Fair Recovery

- X** Opt in within 180 days
- X** Baseline Assessment Program test within two years
- X** Claim Package within two years of receiving a qualifying diagnosis
- X** Asymmetric appeals process

Proposed Revisions for a Fair and Adequate Settlement

Lift the cap on the BAP

Extend the BAP to the full term of the Settlement

Eliminate the opt-in requirement

Make it easier to get a qualifying diagnosis

“Even up” the appeal process

**BASELINE NEUROPSYCHOLOGICAL TEST BATTERY AND SPECIFIC IMPAIRMENT
CRITERIA FOR RETIRED NFL FOOTBALL PLAYERS**

Section 1. Test Battery

| | |
|--|---|
| Estimating Premorbid Intellectual Ability | Learning and Memory (6 scores) |
| ACS Test of Premorbid Functioning (TOPF) | WMS-IV Logical Memory I |
| Complex Attention/Processing Speed (6 scores) | WMS-IV Logical Memory II |
| WAIS-IV Digit Span | WMS-IV Verbal Paired Associates I |
| WAIS-IV Arithmetic | WMS-IV Verbal Paired Associates II |
| WAIS-IV Letter Number Sequencing | WMS-IV Visual Reproduction I |
| WAIS-IV Coding | WMS-IV Visual Reproduction II |
| WAIS-IV Symbol Search | Language (3 scores) |
| WAIS-IV Cancellation | Boston Naming Test |
| Executive Functioning (4 scores) | Category Fluency (Animal Naming) |
| Verbal Fluency (FAS) | BDAE Complex Ideational Material |
| Trails B | Spatial-Perceptual (3 scores) |
| Booklet Category Test | WAIS-IV Block Design |
| WAIS-IV Similarities | WAIS-IV Visual Puzzles |
| Effort/Performance Validity (8 scores) | WAIS-IV Matrix Reasoning |
| <i>ACS Effort Scores</i> | Mental Health |
| ACS-WAIS-IV Reliable Digit Span | MMPI-2RF |
| ACS-WMS-IV Logical Memory Recognition | Mini International Neuropsychiatric Interview |
| ACS-WMS-IV Verbal Paired Associates Recognition | |
| ACS-WMS-IV Visual Reproduction Recognition | |
| ACS-Word Choice | |
| <i>Additional Effort Tests</i> | |
| Test of Memory Malingering (TOMM) | |
| Medical Symptom Validity Test (MSVT) | |

Deficiencies with the Test Battery

“The specific tests selected, and the length of the battery would not be consistent with that given by the large majority of neuropsychologists who specialize in neurodegenerative disease ...”

Dr. Stern Decl. ¶ 43

“... the criteria used in the Settlement could require that the [player’s] test performance be even more impaired than what is often seen in well-diagnosed cases of moderate stage dementia.”

Dr. Stern Decl. ¶ 50

Proposed Revisions for a Fair and Adequate Settlement

Adopt appropriate testing procedures that accurately reflect the extent of injury

Ability to revise test battery as experience using it builds

Use existing NFL tests of player IQ prior to joining NFL



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December 23, 2014

The Honorable Anita B. Brody
U.S. District Judge
7613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: *In re National Football League Concussion Injury Litigation*,
No. 2:12-md-2323

Dear Judge Brody:

We write to inform you of recent supplemental authority that bears on whether the Settlement in the above-captioned case should be approved. In *In re: NCAA Student-Athlete Concussion Injury Litigation*, Judge Lee of the Northern District of Illinois denied preliminary approval to a proposed class-action settlement. See Memorandum Opinion, *In re: NCAA Student-Athlete Concussion Injury Litig.*, No. 1:13-cv-09116 (N.D. Ill. Dec. 17, 2014), Dkt. No. 115 (attached hereto as Exhibit A).

Background

Following the Fairness Hearing, Objectors submitted a supplemental brief supported by declarations of nine of the world's most prominent neurologists and neuropsychologists who further affirmed that CTE is a unique neurodegenerative disease – distinct from ALS, Alzheimer's, or Parkinson's disease – and that repetitive brain trauma is a necessary condition for developing CTE. Dkt. No. 6455, at 6-7. They also affirmed that mood and behavioral impairments manifested more frequently in individuals suffering from CTE, and that such symptoms can cause significant disability for patients long before the onset of CTE-related dementia. *Id.* Finally, they reiterated the scientific judgment that an accepted diagnostic test for CTE would be available long before the end of the 65-year Settlement term. *Id.* at 8. Dr. Stern and Dr. Gandy also submitted supplemental declarations opposing Counsel's distortions of their work at the Fairness Hearing. All eleven of these pre-eminent experts submitted their declarations for free. *Id.* at 9.

Class Counsel and the NFL each submitted their own supplemental brief in response to the post-hearing supplemental brief of Objectors. Dkt. Nos. 6466, 6467.

The Honorable Anita B. Brody

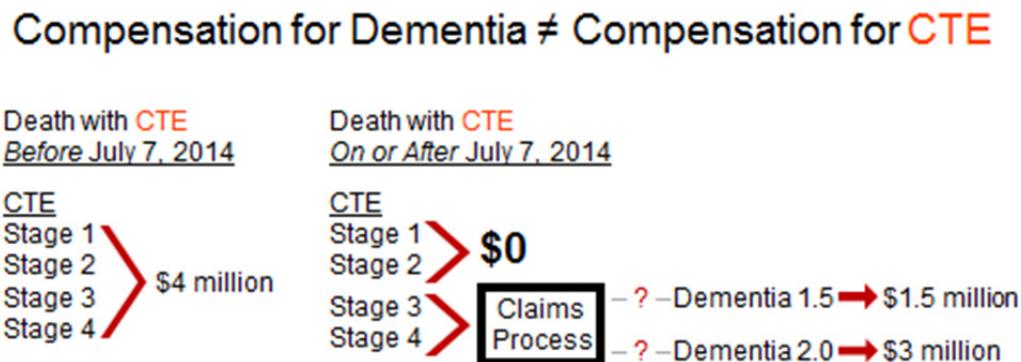
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December 23, 2014

Perhaps not surprisingly, neither Class Counsel nor the NFL made a serious attempt at refuting the overwhelming consensus about the medical science concerning CTE, which was most forcefully set forth in Objectors' post-hearing brief. Indeed, neither could muster a single expert to state, in essence, "the world is flat."¹

The confusion in their own position concerning CTE and how it is treated in the Settlement persisted in the post-hearing briefs of Class Counsel and the NFL. Of course, Class Counsel has conceded that CTE is "the most serious and harmful disease that results from NFL and concussions."² And in their filings prior to the Fairness Hearing, both the NFL and Class Counsel stated clearly that – except for those who died before July 7, 2014 – the Settlement does not compensate CTE. *See* Seeger Decl. ¶ 9 (Dkt. No. 6423-3); NFL Brief at 77-78 (Dkt. No. 6422). Yet the NFL, in its post-hearing brief, now claims that "CTE [i]s [i]ncluded in the Settlement." Dkt. No. 6466, at 5.

As Objectors explained at the Fairness Hearing and in their post-hearing brief, this attempt to back into some type of faux compensation for CTE simply does not work. First, it does not address why a class member gets up to \$4 million for death with CTE on July 7, 2014, but gets \$0 for death with CTE one day later. Second, the possibility of compensation for dementia simply does not equal compensation for CTE, as this chart demonstrates:



¹ The weak-kneed briefs of Class Counsel and the NFL were stunning in their failure to engage on central issues. For example, they *offer no response* to the challenge to the discriminatory short-changing of class members who played in NFL Europe – a defect their own expert says must be addressed. Nor do they even attempt to justify the lack of any named plaintiff alleging that they have CTE or are at an increased risk of suffering from CTE. And despite being challenged to do so at the Fairness Hearing and later in a motion before this Court, neither Class Counsel nor the NFL have disclosed the pay and other economic incentives of their experts.

² Co-Lead Class Counsel Seeger Weiss used to have on its website a tutorial relating to MTBI and football. *Up-To-Date Information on NFL Concussions*, Seeger Weiss LLP, (Sept. 9, 2014), <http://www.seegerweiss.com/football-concussions/#ixzz3CByVHxui> (emphasis added) (Dkt. No. 6201-2, Ex. 1).

The Honorable Anita B. Brody

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December 23, 2014

The NCAA Decision

The NCAA case involves allegations that the NCAA improperly handled college player concussions and concussion-related risks. The Settlement – reached after what the court described as “extensive discovery” – provides medical monitoring and other associated relief for the class. Slip. Op. at 1. The court rejected preliminary approval, noting: “[a] district court may not abandon the Federal Rules merely because a Settlement seems fair, or even if the Settlement is a ‘good deal.’ Indeed, the Rule 23 requirement may be even more important for Settlement classes, for which . . . the district court must act almost as a fiduciary of the class when approving settlements.” Slip. Op. at 9-10 (citations omitted). It then addressed its questions about fairness, raising several issues relevant to the questions before this Court.

First, the court recognized CTE as a unique degenerative disease with symptoms that may be delayed “for many years.” Slip. Op. at 18. The court faulted the Settlement’s failure to account for the possible delayed manifestation of CTE. *Id.*

Second, the court rejected the Settlement’s discriminatory treatment of certain class members, finding that not conferring benefits to players of so-called non-contact sports who lacked a representative at the bargaining table rendered it unfair.³ Slip. Op. at 11. Similarly, the Settlement here discriminates within the class – and the rights of class members with CTE, those who played in NFL Europe, and those who experienced strokes or non-NFL traumatic brain injuries had their rights bargained away without adequate representation.

Third, the court ruled the settling parties failed to demonstrate that the \$70 million fund established for a 50-year medical monitoring program would cover the actual costs of the program over 50 years. Slip. Op. at 12. Similarly, the capped BAP cannot possibly offer all of the benefits claimed by Class Counsel and the NFL over the 65-year life of the Settlement.

³ Conflating the position of amicus Public Citizen and other objectors with the Morey Objectors, Class Counsel assert that a conflict-free set of class representatives would require “a separate subclass for each injury and condition” with a “dozen or so subclasses.” Dkt. No. 6467, at 15. While Public Citizen has advanced a form of this argument, *see* Dkt. No. 6214, at 2-5, to be clear, Objectors have not. To the contrary, Objectors have consistently maintained that only “fundamental conflict[s]” prevent class certification, *see Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 184, 187-88 (3d Cir. 2012) – including the complete failure of the Settlement to compensate current and future cases of CTE even though CTE is “the most serious and harmful disease that results from NFL and concussions.” *See* p. 3 n.3, *supra*. Extensive subclassing simply is unnecessary here. As Objectors have made clear, there are relatively simple solutions that would go a long way to curing the major flaws in the Settlement. *See* Dkt. No. 6455, at 30-31.

The Honorable Anita B. Brody

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December 23, 2014

Fourth, the court criticized the fact that the medical evaluations contemplated in the Settlement would only be administered at certain locations. Slip. Op. at 18-19. This criticism mirrors Objectors' concern regarding the nationwide scarcity of neurologists certified to render a Qualifying Diagnosis under the terms of the Settlement.

Conclusion

Like the Settlement in *In re: NCAA Student-Athlete Concussion Injury Litigation*, the Settlement here is unfair, inadequate, and unreasonable. It, too, should be rejected.

Respectfully submitted,

/s/ Steven F. Molo
Steven F. Molo

Cc: Christopher Seeger (via ECF)
Brad Karp (via ECF)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|---|---|--|
| IN RE: NATIONAL COLLEGIATE |) | |
| ATHLETIC ASSOCIATION |) | MDL No. 2492 |
| STUDENT-ATHLETE CONCUSSION |) | |
| INJURY LITIGATION |) | Master Docket No. 13 C 9116 |
| |) | |
| |) | Judge John Z. Lee |
| |) | |
| |) | Magistrate Judge Geraldine Soat Brown |
| |) | |
| This Document Relates to All Cases |) | |

MEMORANDUM OPINION AND ORDER

Plaintiffs in this multidistrict litigation are current and former collegiate athletes who have sued the National Collegiate Athletic Association (“NCAA”) on a classwide basis, claiming that the NCAA breached certain contractual obligations and common law duties to Plaintiffs in the way it handled student-athlete concussions and concussion-related risks. After conducting extensive discovery, the parties engaged in a lengthy mediation process and now ask this Court to preliminarily approve their negotiated settlement pursuant to Fed. R. Civ. P. 23(e).

In short, the settlement provides medical monitoring and other associated relief to the class and requires the NCAA to enact policy changes to its “return-to-play” guidelines for student-athletes who suffer concussions or concussion-related symptoms. In return, class members would release the NCAA and its affiliated organizations from all medical monitoring claims and waive the right to pursue on a classwide basis compensation for individual personal injury claims. Additionally, as part of the settlement approval process, the settling Plaintiffs (“Plaintiffs”) and the NCAA request that the Court certify the proposed settlement class under Fed. R. Civ. P. 23(b)(2) or Fed. R. Civ. P. 23(b)(3).

The proposed settlement is not without its detractors. Most prominently, putative class member Anthony Nichols opposes the settlement, arguing that its terms are insufficient to protect the class and improperly waives the right of class members to seek monetary damages on a classwide basis.

The Court previously has questioned the ability of the current class representatives, who consist of participants in contact sports, to adequately represent the interest of the proposed class, which is comprised of participants in both contact and non-contact sports. Adequacy of representation, of course, is a requirement of Rule 23(a). Fed. R. Civ. P. 23(a)(4). The parties informed the Court at the last hearing that they are in the process of trying to address this issue. After reviewing the various settlement submissions, the Court has identified a number of additional concerns regarding the implementation of the medical monitoring program and the adequacy of Plaintiffs' notice program. Although these concerns may prove surmountable, the Court cannot grant preliminary approval of the settlement as currently proposed. Accordingly, the motions for preliminary approval are denied.

Procedural Background

On September 12, 2011, Adrian Arrington filed a class action lawsuit against the NCAA on behalf of a putative class of student-athletes. *See Arrington, et al. v. Nat'l Collegiate Athletic Ass'n*, No. 11-cv-06356 (N.D. Ill.). Derek Owens subsequently filed a separate class action lawsuit, also on behalf of a putative class of student-athletes, which was consolidated with *Arrington*. *See Owens v. Nat'l Collegiate Athletic Ass'n*, No. 11-cv-6816 (N.D. Ill.). After consolidation, several additional student-athletes joined the case as plaintiffs, seeking medical monitoring for all current and former student-athletes along with changes to the NCAA's return-to-play guidelines for students who experience concussions or concussion-related symptoms. At the time, the *Arrington* Plaintiffs also sought monetary damages for their injuries.

After the Court appointed Steve W. Berman of Hagens Berman Sobol Shapiro LLP and Joseph Siprut of Siprut PC as Interim Co-Lead Counsel on behalf of the putative class, Plaintiffs filed a Consolidated Class Action Complaint and conducted extensive discovery. On March 11, 2013, Plaintiffs filed their Second Amended Class Action Complaint, and, shortly thereafter, moved to certify the class for medical monitoring purposes only. *Arrington* Dkt. 135, 174. Before the NCAA was to file a response, however, the parties mutually sought a stay of the Court's consideration of the motion pending settlement negotiations. On August 15, 2013, the Court granted the stay.

Once the *Arrington* case was stayed and settlement negotiations had begun, numerous other actions on behalf of current and former NCAA student-athletes were filed against the NCAA nationwide. The Judicial Panel for Multidistrict Litigation consolidated the individual cases in *In re National Collegiate Athletic Ass'n Student-Athlete Concussion Injury Litig.*, MDL No. 2492, Master Dkt. No. 1:13-cv-09116 (N.D. Ill.) (the "MDL").¹ The Related Actions were transferred to this Court as part of the MDL for coordinated and consolidated pre-trial proceedings. Settlement negotiations continued between the *Arrington* Plaintiffs and the NCAA. These negotiations were aided by the oversight of two distinguished retired federal judges, Judge

¹ As of this date, the subsequently-filed actions are as follows: (i) *Walker, et al. v. NCAA*, No. 1:13-cv-00293 (E.D. Tenn., filed Sept. 3, 2013); (ii) *DuRocher, et al. v. NCAA*, No. 1:13-cv-01570 (S.D. Ind., filed Oct. 1, 2012); (iii) *Doughty v. NCAA*, No. 3:13-cv-02894 (D.S.C., filed Oct. 22, 2013); (iv) *Caldwell, et al. v. NCAA*, No. 1:13-cv-03820 (N.D. Ga., filed Oct. 18, 2013); (v) *Powell, et al. v. NCAA*, No. 4:13-cv-01106 (W.D. Mo., filed Nov. 11, 2013); (vi) *Morgan, et al. v. NCAA*, No. 0:13-cv-03174 (D. Minn., filed Nov. 19, 2013); (vii) *Walton, et al. v. NCAA*, No. 2:13-cv-02904 (W.D. Tenn., filed Nov. 20, 2013); (viii) *Washington, et al. v. NCAA*, No. 4:13-cv-02434 (E.D. Mo., filed Dec. 3, 2013); (ix) *Hudson v. NCAA*, No. 5:13-cv-00398 (N.D. Fla., filed Dec. 3, 2013); (x) *Nichols v. NCAA*, No. 1:14-cv-00962 (N.D. Ill., filed Feb. 11, 2014); and (xi) *Wolf v. NCAA*, No. 1:13-cv-09116 (N.D. Ill., filed Feb. 20, 2014) (collectively, the "Related Actions"). Since the MDL was formed, two additional cases have been transferred to the MDL and are included in the definition of Related Actions: *Jackson v. NCAA*, No. 1:14-cv-02103 (E.D.N.Y., filed Apr. 2, 2014); and *Whittier v. NCAA*, No. No. 1:14-cv-0978 (W.D. Tex., filed Oct. 27, 2014).

Layn Phillips (ret.) and Judge Wayne Anderson (ret.). Plaintiffs' counsel in the Related Actions also were provided an opportunity participate in these discussions.

One of the Related Actions, *Nichols v. NCAA*, No. 1:14-cv-00962 (N.D. Ill), bears special mention. While the majority of the Related Actions sought only Medical Monitoring relief, the *Nichols* action also sought to certify a class of plaintiffs seeking monetary damages. The *Nichols* plaintiffs currently oppose the proposed settlement with the NCAA on numerous grounds and wish to retain their rights to pursue monetary damages on a classwide basis, something that the settlement, if approved, would prohibit.

The Proposed Settlement

After lengthy negotiations, Plaintiffs and the NCAA have agreed to the terms of an Amended Class Settlement Agreement and Release (the "Settlement Agreement"). Dkt. 92, Ex.

A.² A brief summary of its terms is provided below.

As an initial matter, the proposed Settlement Class is defined as:

All current or former student-athletes who played an NCAA-sanctioned sport at an NCAA member institution on or prior to the Preliminary Approval Date.

SA ¶ II(D). The proposed Settlement Class Representatives are:

| Representative | Sport | Institution | Participation Dates |
|-----------------------|--------------|--------------------------------|----------------------------|
| Adrian Arrington | Football | Eastern Illinois University | 2006—09 |
| Derek Owens | Football | University of Central Arkansas | 2008—11 |
| Angelica Palacios | Soccer | Ouachita Baptist University | 2010—11 |

² Plaintiffs filed an Amended Motion for Preliminary Approval and an Amended Class Settlement Agreement and Release on October 21, 2014. Dkt. 91. This supplemented Plaintiffs' original motion filed on July 29, 2014. Dkt. 64. Capitalized terms, to the extent they appear in this order, are as defined in the Amended Settlement Agreement. Unless otherwise noted, "Dkt. __" refers to documents filed in the MDL, No. 13-cv-9116.

| | | | |
|--------------------|-----------|--|--------------|
| Kyle Solomon | Hockey | University of Maine | 2008—10 |
| Abram Robert Wolf | Football | Simpson College | 2012—present |
| Sean Sweeney | Wrestling | Buena Vista College | 1991—93 |
| Jim O’Conner | Football | Drake University | 1971—74 |
| Dan Ahern | Football | North Carolina State University | 1972—76 |
| Paul Morgan | Football | Vanderbilt University | 1994—97 |
| Jerry Caldwell | Football | Georgia Tech University | 1995—98 |
| John DuRocher | Football | University of Oregon; University of Washington | 2003—06 |
| Sharron Washington | Football | University of Missouri | 1987—91 |

Each of the Settlement Class Representatives has suffered concussions or was exposed to subconcussive hits, and each is in need of medical monitoring. Dkt. 65 at 16-17.

The NCAA has agreed to the following terms to effectuate the settlement. The NCAA and its insurers will pay \$70 million to create a Medical Monitoring Fund (the “Fund”). The Fund will be used to pay the expenses associated with the Medical Monitoring Program, including: Screening Questionnaires, Medical Evaluations, Notice and Administrative Costs, Medical Science Committee Costs, Attorneys’ Fees and Costs, and Class Representatives’ Service Awards. SA ¶ IV(A)(1)(b). The Medical Monitoring Program (the “Program”) will last for a fifty-year Medical Monitoring Period. The NCAA also is providing \$5 million in additional funds for concussion-related research. SA ¶ IX(A).

Under the terms of the Program, members of the Settlement Class may participate in the Program during the Medical Monitoring Period. The Program has two phases: screening and evaluation. In the screening phase, Class Members may assess their own symptoms by completing a Screening Questionnaire in hard copy or online up to a maximum of five times

during the Medical Monitoring Period. Their scores on the Screening Questionnaire will determine whether they qualify for a Medical Evaluation. The standard for determining whether a Class Member qualifies for a Medical Evaluation will be set by the Medical Science Committee (the “Committee”), which will consist of four (4) medical experts, who have expertise in diagnosis, care, and management of sports-related concussions, and in mid- to late-life neurodegenerative disease. These medical experts will be appointed jointly by the parties, and the Committee will be chaired by Judge Anderson. SA ¶ (V)(A)(1).

With respect to the evaluation phase, Class Members will be notified if they qualify for a Medical Evaluation and instructed on where and how to obtain one. There will be ten Program Locations nationwide at which the Medical Evaluations will take place.³ The Program Administrator will assist Class Members who qualify for Medical Evaluations to find the most convenient location. Class Members may qualify for up to two Medical Evaluations during the Medical Monitoring Period and may seek a third, if necessary, by submitting an appropriate request to the Committee. The Medical Evaluations will be submitted to a physician, who will provide a diagnosis as well as the results of the testing to the Class Member or their physician, at the option of the Class Member.⁴

The Committee will determine the scope of the Medical Evaluations, and will consider the following types of testing for inclusion: neurological; neuropsychological; mood, behavioral,

³ Although the Settlement Agreement contemplates ten Program Locations, during a recent hearing, Plaintiffs’ counsel indicated that the parties are considering increasing this number to thirty-three locations.

⁴ Under the Settlement Agreement, if a class member lives more than two hundred miles from the nearest Program Location, the individual has two options. He or she can request to receive a mileage reimbursement for travel to the Program Location, or he or she can choose to have a Medical Evaluation performed by a local physician and seek reimbursement for out-of-pocket costs in the amount of the actual costs for the evaluation or the average costs of the Medical Evaluation within the Program, whichever is lesser. SA ¶ VI(A)(IV).

and movement evaluation; and any ancillary testing suggested by a neurologist. The Committee also will review annually and amend as needed the Questionnaire and the scope of the Evaluations; oversee the performance of the Program Locations; provide a written report regarding their responsibilities and performance for submission to the Court; and recommend how research funds should be expended. The Committee will be compensated at a reasonable hourly rate from the Fund by the Program Administrator.⁵

The NCAA also has agreed to make changes to its concussion-management and return-to-play policies.⁶ First, the NCAA will institute a policy requiring all student-athletes to undergo pre-season baseline testing for each sport they play prior to beginning practice or competition. SA ¶ VIII(A)(1). Second, the NCAA will revise its return-to-play guidelines to provide that “[s]tudents with a diagnosed concussion will be prohibited from returning to play or participation in any practice or game on that same day and must be cleared by a physician before being permitted to return to play in practice or competition.” SA ¶ VIII(A)(3). Third, medical personnel, who are trained in the diagnosis, treatment, and management of concussions, will be present at all games of Contact Sports—defined as football, lacrosse, wrestling, ice hockey, field hockey, soccer, and basketball—and be available during all Contact Sports practices. SA ¶ VIII(4)-(5). Fourth, the NCAA will enact a reporting process for schools to report diagnosed concussions and their resolution, and for concerned persons to report potential problems directly to the NCAA. SA ¶ VIII(D). Fifth, the NCAA will require its schools to provide NCAA-

⁵ In the event that the Fund is depleted before the expiration of the fifty-year period, the Settlement Agreement provides that the class members once again will be free to pursue claims for medical monitoring against the NCAA on “an individual, non-class basis.” SA ¶ IV(A)(5). The parties agree that the statute of limitations with respect to such claims will be tolled during the period that the Program is in effect. *Id.* Alternatively, at the request of Class Counsel, the NCAA may agree to provide additional funding for the Program, although it has no obligation to do so. SA ¶ IV(A)(7).

⁶ According to the NCAA, a number of these changes already have been, or are in the process of being, implemented.

approved concussion education and training to student-athletes, coaches, and athletic trainers prior to the start of each athletic season. SA ¶ VIII(F). Sixth, the NCAA will provide education for faculty with respect to allowing academic accommodations for students suffering from concussions.

As consideration for the Settlement Terms outlined above, the Class Representatives and the Settlement Class “have agreed to release (i) any and all claims seeking damages or other legal or equitable relief for medical monitoring related to concussions or subconcussive hits sustained during participation in collegiate sports as an NCAA student-athlete; and (ii) any and all claims seeking relief for personal injury on a class-wide basis related to concussions or subconcussive hits sustained during participation in collegiate sports as an NCAA student-athlete.” Dkt. 65 at 26 (citing SA ¶ XIV(A)(7)). However, the Class Representatives and the Settlement Class “are not releasing, and have expressly reserved, individual personal injury claims, as well as any other claims unrelated to medical monitoring relief for concussions or subconcussive hits.” *Id.* This release would inure to the benefit of “the NCAA, its member institutions (past and present), its current and former officers, directors, employees, insurers, attorneys, and agents.” SA ¶ PP (defining “Released Persons”). Additionally, the NCAA has agreed to toll the statute of limitations for all personal injury claims from September 12, 2011, (the date the *Arrington* action was filed) through the date of the Court’s decision with respect to the Settlement’s final approval. SA ¶ XX(S).

The parties state that the issue of attorneys’ fees was deferred until after the agreement in principal was reached on all material terms during the mediation process. Since that time, the parties have arrived at an agreement as to the amount of attorneys’ fees that the attorneys for the proposed class would receive if and when the Settlement is approved. Specifically, the NCAA

has agreed that it will not oppose an award of Attorneys' Fees and Expenses up to \$15,000,000.00 and up to \$750,000.00 in out-of-pocket expenses. SA ¶ XVI. As Class Counsel will have a continuing obligation to implement the terms of the Settlement throughout the Medical Monitoring Period, the NCAA also has agreed not to object to applications from Lead Counsel and one member of the Plaintiffs' counsel Executive Committee for additional attorneys' fees, at a rate not to exceed \$400.00 per hour to a maximum of \$500,000.00 for work performed after the first year from the Effective Date of Settlement. *Id.* Plaintiffs also intend to apply to the Court for reasonable service awards for the Class Representatives in this matter, which will be paid from the Fund. The NCAA agrees not to object to Service Awards in the amount of \$5,000.00 for the Class Representatives deposed in the *Arrington* matter (namely, Adrian Arrington, Derek Owens, Angelica Palacios, and Kyle Solomon), and \$2,500.00 for each Settlement Class Representative who has not been deposed. *Id.*

Legal Standard

Approval of a class action settlement under Rule 23(e) is a two-stage process. *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). First, the Court considers the proposed settlement to determine whether the settlement is “within the range of possible approval.” *Id.* (internal citations omitted). During this stage, the Court also must determine whether certification of the proposed class is appropriate under Rule 23(a) and (b). *See Amchem v. Windsor*, 521 U.S. 591, 620 (1997) (noting that a court should give “heightened” attention to ensure that the requirements of Rule 23, with the exception of Rule 23(b)(3)(D)’s manageability requirement, are met in the context of settlement classes).⁷ Along these lines, “a district court may not abandon the Federal Rules merely because a settlement seems fair, or even if the

⁷ Because the Court has not previously certified a class in this case, the Court also has the discretion at the preliminary approval stage to conditionally certify the class for purposes of providing notice to putative class members. *See Manual for Complex Litigation (Fourth)* § 21.632 (2004).

settlement is a ‘good deal.’” *Uhl v. Thoroughbred Tech. & Telecoms., Inc.*, 309 F.3d 978, 985 (7th Cir. 2002). Indeed, “the Rule 23 requirements may be even more important for settlement classes, for which . . . the district court must act almost as a fiduciary of the class when approving settlements.” *Id.* (citing *Reynolds v. Beneficial Nat’l Bank*, 288 F.3d 277, 279-80 (7th Cir. 2002)). If these questions are answered in the affirmative, the Court will order Plaintiffs to provide notice of the settlement to the class “in a reasonable manner” so that the class members can raise any objections to the settlement. Fed. R. Civ. P. 23(e)(1).

Once the class is provided with notice of the settlement and an opportunity to object, the Court conducts a final approval hearing as part of the second stage to determine whether the settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). If the Court is satisfied that the settlement meets these criteria, it will grant final approval of the settlement, which binds the defendant and all class members to the terms of the settlement.

Because each and every member of the class will be bound by a settlement that receives final approval, the Court’s review of the settlement is critical. As the Seventh Circuit has explained, when parties seek approve of a class action settlement, the lack of the customary adversarial relationship between the plaintiffs and defendants, as well as the potential conflicts of interest that may arise between class counsel and the class members, requires that district judges “give careful scrutiny to the terms of the proposed settlements in order to make sure that class counsel are behaving as honest fiduciaries for the class as a whole.” *Mirfasihi v. Fleet Mortg. Corp.*, 356 F.3d 781, 785 (7th Cir. 2004) (Posner, J.); *see also Redman v. RadioShack Corp.*, 768 F.3d 622, 629 (7th Cir. 2014) (noting that, when approving a settlement in a class action, a judge “is not to assume the passive role that is appropriate when there is genuine adverseness between the parties”).

Discussion

I. Rule 23(a)(4)’s Adequacy Requirement

The Court previously has expressed its concern that the current Class Representatives will not “fairly and adequately protect the interests of the class” as required by Rule 23(a)(4). In short, the definition of the settlement class includes current and former student-athletes who play or played any NCAA-sanctioned sport at any NCAA member institution. It includes student-athletes who played both Contact Sports (football, lacrosse, wrestling, ice hockey, soccer, and basketball) and non-Contact Sports (such as baseball, water polo, cross-country, golf, and riflery, to name a few). The proposed settlement, however, treats these categories differently.⁸

First, as between participants in Contact Sports and non-Contact Sports, the proposed settlement provides for certain additional return-to-play protections for participants in Contact Sports by requiring medical personal with training in the diagnosis, treatment and management of concussions to be “present” at all Contact Sports games and “available” at all Contact Sports practices. SA ¶ VIII(A)(4)-(5). No such provision is made for non-Contact Sports games and practice. This is not to say that the student-athletes who play or played non-Contact Sports would demand (or even desire) such protections as part of a negotiated settlement. Perhaps, the benefits of the future medical monitoring plan that the settlement provides would outweigh the benefits of such staffing at non-Contact Sports events. But, in light of the undisputed data that more than half of the approximately 4.2 million potential class members play or played non-Contact Sports, the current Class Representatives simply are not qualified to make that decision for them.

⁸ Prior to the issuance of this order, Plaintiffs filed a motion to join additional class representatives to address these concerns. Dkt. 105. That motion remains pending.

This is not to say that every single NCAA-sanctioned sport must be represented in this action. But, as NCAA's counsel acknowledged, the risks of suffering a concussion while playing NCAA-sanctioned sports are scattered along a continuum with football on the highest end and sports such as riflery on the lower end. The class representatives as a group must adequately represent this continuum as a whole so that the various interests along the continuum can be voiced as part of the settlement process.

Along these lines, the Court further notes that, when opining that \$70 million is sufficient to fund the fifty-year medical monitoring program, Plaintiff's expert Bruce Deal calculated the anticipated participation rate based upon the rate of reported concussions for student-athletes in Contact Sports only. Dkt. 70 at 6-7, 13. But it is undisputed that players in non-Contact Sports can and do suffer concussions. Take, for example, a catcher in baseball or a center in water polo. And the NCAA not only maintains this data, but has produced it during the course of discovery in this case. Although Plaintiffs' counsel stated during the hearing that Deal considered this data, his report is devoid of any analysis (or mention) of occurrences of concussions in non-Contact Sports. This gives rise to a concern that the estimated participation rates calculated by Deal are not entirely reliable, and that the \$70 million Fund would be insufficient to fully fund the Program.

Furthermore, although the medical monitoring program will be available to the entire class, by providing additional return-to-play protections for current and prospective student-athletes, the proposed settlement confers more benefits to current players than former players. The current class representatives include former players of certain Contact Sports, but not non-Contact Sports. The Court believes that additional representation is necessary for those putative class members who formerly played both non-Contact Sports, as well as Contact Sports other

than football. Only in this way will the class representatives adequately represent the interests of the entire putative settlement class, rather than only parts of it.

II. Ascertainability and the Proposed Notice Plan

In order to obtain class certification, Plaintiffs also must demonstrate that the class is sufficiently “identifiable as a class.” *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 513 (7th Cir. 2006) (citing *Simer v. Rios*, 661 F.2d 655, 669 (7th Cir. 1981), and *Alliance to End Repression v. Rochford*, 565 F.2d 975, 977 (7th Cir. 1977)); see also *Jamie S. v. Milwaukee Pub. Schs.*, 668 F.3d 481, 493 (7th Cir. 2012) (“a class must be sufficiently definite that its members are ascertainable”). “A class is sufficiently definite if its members can be ascertained by reference to objective criteria and may be defined by reference to defendants’ conduct.” *Hinman v. M&M Rental Ctr.*, 545 F. Supp. 2d 802, 806 (N.D. Ill. 2008).

The proposed Settlement Class is, by its terms, sufficiently definite. The objective criteria are clear: it consists of all current and former student-athletes at all NCAA member institutions. But the class is not limited by gender, by time frame, by member institution, or by sport. And the sheer breadth of the class definition makes it difficult to ascertain the individual members of the class in practice. The difficulty of identifying all putative class members manifests itself starkly in the context of Plaintiffs’ notice program.

Here, Plaintiffs request that the Court certify the settlement class as a “hybrid class” under Rule 23(b)(2) and 23(d)(1)(B). Pls.’ Mem. Supp. Mot. Preliminary Approval at 28 (Dkt. 65). In so doing, the parties propose that the members of the settlement class be provided notice and an opportunity to opt-out of the settlement.⁹ As part of the proposed notice plan, the parties intend to provide some form of direct notice to the class members. 10/23/14 Hearing Tr. (Dkt.

⁹ Whether the proposed settlement class is suited for such “hybrid” treatment under Rule 23(b)(2) and 23(d)(1) is an issue that remains under consideration at this time.

103) 18:21-22:13. To do this, the NCAA will send a written request to all NCAA member schools for address data and contact information for all current and former participants in NCAA-sanctioned sports at those schools. But the parties acknowledged that they do not know whether and in what manner the individual schools maintained such data over the years. *Id.* 18:21-19:4. Indeed, the further back in time information is sought, the less likely it will be that the individual schools would have ripe contact information. It is reasonable to assume that many class members will have moved or changed their names (or both) in the intervening years. This is not an insignificant problem given the importance that Plaintiffs have attached to the issuance of notice to the class and the fact that approximately two-thirds of the settlement class graduated from school more than ten years ago. *See Deal Rpt. (Dkt. 70) at 17.* What is more, it was not entirely clear whether the NCAA has the authority to mandate that a member institution comply with the information request in a timely manner.

Given the dearth of information, the Court is unable to determine on the current record the plausibility and appropriateness of a direct notice program. The present lack of information also impairs the parties' ability to estimate how much an effective direct notice program would cost. As Plaintiffs' counsel and their proposed Notice Administrator, Alan Vazquez, acknowledged at the hearing, the estimated costs of the notice program provided by the parties does not include a direct notice component. 10/23/14 Hearing Tr. (Dkt. 103) 19:21-21:20. And presumably the costs of such a program would come out of the \$70 million Fund, thereby decreasing the funds available for other purposes. *See SA ¶ IV(A)(2)(d).*¹⁰ Accordingly, given the paucity of information, the Court cannot determine whether and to what extent a direct notice program would be appropriate under Rule 23(d)(1)(B) and Rule 23(e)(1).

¹⁰ The Court further notes that the cost of the notice program, which is estimated to be at least \$800,000.00 *without* a direct notice component, is not included in the \$6.7 million of administrative costs considered by Deal in his report. *Id.*

To obtain additional information for this analysis, the Court directs the parties to select nine different NCAA-member institutions, three from each division, and request that the institutions provide the address and contact information that they have for members of the putative settlement class. This initial sampling should provide additional information to the parties and the Court regarding the plausibility of a direct notice program and the attendant costs. Plaintiffs and the NCAA should submit a report summarizing their efforts and the results within sixty days of the issuance of this order. To the extent that the results from this initial sampling impact the parties' evaluation of the contemplated direct notice program and its costs, the report should include a discussion of these issues.

Additionally, in the Settlement Class Representatives' Motion for Approval of Notice Plan (Dkt. 84), Plaintiffs assert that proposed notice plan will reach "at least 80% of the Settlement Class." *Id.* at 9. Moreover, during the hearing, Plaintiffs' counsel provided "estimated reach" calculations in the range of 80.37% to 84.66%. However, neither the parties' briefs nor the declaration of Alan Vazquez sets forth with any specificity the basis for these calculations. The Court requests that the parties provide additional information regarding the basis of these calculations in the same report.

III. Additional Fairness Concerns

In addition to the issues discussed above, the Court requests that Plaintiffs and the NCAA address the following fairness concerns regarding the proposed settlement as part of the approval process.

A. NCAA's Ability To Bind Its Member Institutions

The Settlement Agreement, if approved, would preclude class members from bringing claims against Released Persons. Released Persons, in turn, includes not only the NCAA, but its

member institutions—*i.e.*, the NCAA-affiliated schools. It is unclear, however, whether the NCAA has the authority to mandate that its member schools implement the proposed “return-to-play” policies and what enforcement mechanisms will be in place in the event of noncompliance. Given the wide array of schools that are affiliated with the NCAA, it is reasonable to believe that some schools may face financial or logistical challenges in implementing some of the changes that are proposed. Accordingly, it is critical for the Court to understand the range of actions the NCAA may take against a member institution that either intentionally or inadvertently fails to comply with the terms of the Settlement Agreement. Furthermore, to the extent that a member school fails to comply with the provisions of the Settlement Agreement, it seems unfair to provide such a school with the benefits of the settlement without any of its costs. Put another way, a class member student-athlete who plays football at School A should not be precluded from suing School A, if the school refuses (either because it is unwilling or unable) to comply with the terms of the Settlement Agreement. The NCAA believes this scenario to be extremely unlikely, and perhaps so. But there is nothing in the record to enable the Court to make this determination.

B. Criteria Used To Evaluate and Score Questionnaires

The Settlement Agreement contemplates a process by which a participating class member submits a Questionnaire to the Committee, which then evaluates and scores the Questionnaire to determine whether the individual would qualify for a Medical Evaluation. The Settlement Agreement, however, lacks specificity as to the criteria that the Committee will employ to evaluate and score the Questionnaires. When questioned about this issue at oral argument, Plaintiffs’ counsel raised some concern that disclosure of the particular criteria and methodology used in these assessments might promote manipulation, thereby preventing the fair and effective

administration of the medical monitoring program. 10/23/14 Hearing Tr. (Dkt. 103) 56:11-57:7. But the criteria and methodology used by the Committee to determine who will receive a Medical Evaluation will directly impact the number of Medical Evaluations that will be offered over the life of the program and, in turn, the Program's anticipated costs. For instance, the review criteria could be so exacting so as to artificially limit the number of class members who were eligible for a Medical Evaluation, thus endangering the health of individuals who should be receiving treatment and subverting the entire purpose of the Program. Conversely, if the criteria are more lenient and too many class members who have no need of treatment receive evaluations, the funds allotted for the Program could be exhausted far too soon. Accordingly, the review criteria bear directly on the settlement's anticipated benefits to the class as well as the sufficiency of the proposed Fund.

Although the Court is mindful of the concerns raised by Plaintiffs' counsel, the parties need to provide the Court with a more specific framework for how the Committee intends to score the Questionnaires, along with any support declarations from their medical experts regarding its appropriateness. This information need not consist of a detailed recitation of the actual criteria and methodology that will be employed, but must be sufficient to apprise the Court of the general standards and guidelines that the Committee will use in its review. Such information also will be valuable to putative class members as they weigh the benefits of the Settlement Agreement.

C. Limitations on Questionnaires and Evaluations

The Settlement Agreement limits the maximum number of times that a class member may complete a Questionnaire to five during the entire fifty-year period, and limits the number of Medical Evaluations to two during that same time frame. However, the scholarship on

Chronic Traumatic Encephalopathy (“CTE”) demonstrates that individuals who have been affected may be asymptomatic for many years. *See* Cantu Report (Dkt. 69) ¶ 41. The Court needs further information as to how the parties plan to address the situation where a former student-athlete completes the maximum number of Questionnaires permitted, but later begins suffering from CTE-related symptoms. While the Settlement Agreement contains a provision allowing a class member to ask the Committee for additional Medical Evaluations, SA ¶ IV(B)(4)(h), it should provide a more specific procedure for doing so, including but not limited to an established time frame for the Committee to respond.

D. Program Locations

The Settlement Agreement contemplates at least ten Program Locations nationwide where class members can go to receive Medical Evaluations. The placement of these Program Locations will directly impact participation rates from the Settlement Class. While the Settlement Agreement indicates that the locations will be evaluated by the Medical Science Committee, it does not provide any factors that the Committee should consider when making its decision. It would assist the Court in conducting its fairness review to understand the Committee’s decision-making process and the parameters they used when selecting locations.

Furthermore, Plaintiffs’ counsel now indicates that they are looking to increase the number of Program Locations to at least thirty-three different sites that would cover approximately 90% of the population within 200 miles. When asked why 200 miles was selected as the yardstick, Plaintiffs’ counsel responded that the parties just thought it was a reasonable distance. The Court believes that the Program Locations should be situated so that a class member will be able to travel to the site, take the Medical Evaluation, and return to his or her home in one day, without the need for overnight accommodations. Because the record does not

indicate how long a Medical Evaluation would take, whether the 200-mile limitation would satisfy this requirement is unclear.

E. Retention Provision

The Settlement Agreement provides that, at the end of the fifty-year period, any unused funds would revert back to the NCAA. SA ¶ XIX(C)(4). Such retention provisions have the potential of creating conflicts of interest in the administration of class action settlements and generally are disfavored. *See, e.g., In re Lupron Mktg. and Sales Practices Litig.*, 677 F.3d 21, 32-33 (1st Cir. 2012) (citing Am. Law Inst., *Principles of the Law of Aggregate Litig.* § 3.07(b) (2010)); *Mirfasihi*, 356 F.3d at 784 (endorsing use of *cy pres* trust for balance of class action settlement funds to prevent windfall to defendant). In this case, such a provision could create incentives for the Committee and the Program Administrator (either now or in the future) to artificially curtail the number of Medical Evaluations so that the Program could minimize its costs and leave a balance at the end of the fifty-year term.¹¹ Accordingly, the Court rejects Section XIX(C)(4) of the proposed Settlement Agreement. Instead, the Court suggests that, to the extent that any of the original \$70 million remains in the Fund at the end of the fifty-year period, the parties agree to use the remaining funds to extend the fifty-year term, thereby providing additional benefits to the class, or donate the unused funds to an appropriate independent institution devoted to concussion research or treatment. Such alternative uses of the remaining funds would benefit the class, minimize the potential for a conflict of interest in the implementation of the Program, and ensure that the entire \$70 million will benefit the class members in some fashion.

¹¹ As discussed above, imposing overly stringent criteria to review and score Questionnaires is one potential way this could be accomplished.

That said, if it appears that the \$70 million will be depleted before the end of the fifty-year term, the Settlement Agreement also permits the NCAA and/or its insurers to deposit additional funds above and beyond the \$70 million for the medical monitoring program. *See* SA ¶ IV(A)(7). In such an event, the Court does not believe that allowing the NCAA to retain any unused funds at the end of the fifty-year period would be unreasonable and, in fact, would encourage the NCAA to do so.

Additionally, if the \$70 million is insufficient to cover the Program for 50 years, the Settlement Agreement allows the class members to pursue their medical monitoring claims at that time. SA ¶ IV(A)(5). However, they may only pursue such claims on “an individual, non-class basis.” *Id.* Given the costs of mounting such a challenge on an individual basis, the Court concludes that such a waiver is unreasonable and unfair. The Settlement Agreement contemplates a fifty-year medical monitoring program. To the extent that the Program is unable to operate for those 50 years, the class members should have the right to reassert their medical monitoring claims either on an individual or classwide basis.

At this point, it also bears noting that, in light of the numerous issues discussed throughout this order, the Court does not have sufficient information to determine whether the proposed \$70 million will be sufficient to implement the Program as it is described in the Settlement Agreement. The additional information requested by the Court will be salient to this analysis.

F. Fees of Objectors and Continuing Oversight

Two minor points remain to be addressed. First, the Settlement Agreement provides that any attorneys’ fees incurred by objectors to the Settlement must be borne by the objector. SA ¶ XI(C)(1)(p). At oral argument, the Court queried whether the Parties would agree to modify that

provision, allowing the Court to award fees at its discretion from the Fund to objectors as appropriate. The Parties indicated they would not object to that modification, and future drafts of the Settlement Agreement should reflect that change. Second, the Settlement Agreement calls for continuing supervision by the Court. Given the long length of time allotted for the Plan and the potential for numerous issues to arise, at least at inception, the Court suggests that the Parties consider the utility of allowing the Court to appoint a Special Master to oversee the implementation of Settlement Agreement with appropriate oversight from the Court.

Conclusion

The Settlement Agreement proposed by the parties is a significant step in trying to arrive at a resolution of this highly complex matter. In light of the concerns expressed above, however, the Court must deny Plaintiffs' Motion for Preliminary Approval of Amended Class Settlement and Certification of Settlement Class [Dkt. 64] and Amended Motion [Dkt. 91]. The denial is without prejudice, and the Court encourages the parties to continue their settlement discussions in order to address these concerns.

SO ORDERED

ENTERED



John Z. Lee
United States District Judge

Dated: December 17, 2014

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | |
|---|--|
| IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION | No. 2:12-md-02323-AB MDL No. 2323 |
| THIS DOCUMENT RELATES TO: ALL ACTIONS | Hon. Anita B. Brody |

ORDER

On July 7, 2014, I preliminarily approved the Class Action Settlement Agreement (ECF No. 6084). Class Plaintiffs have since moved, pursuant to Federal Rule of Civil Procedure 23(e) and Section 20.1 of the Class Action Settlement Agreement, for the entry of Final Order and Judgment (ECF No. 6423). In consideration of this Motion, I have reviewed the briefs, supporting affidavits, and other materials in support of final approval filed by Class Counsel and the NFL Parties (ECF Nos. 6422, 6423, 6466, 6467), the objections to final approval of the Class Action Settlement filed by various objectors and their counsel and the responsive briefs to the motion for final approval of the Class Action Settlement, and the arguments in support of, and in objection to, the Class Action Settlement at the November 19, 2014 Fairness Hearing (*see* ECF No. 6463) and the post-Hearing submissions.

After reviewing these submissions and arguments, I believe that the following changes would enhance the fairness, reasonableness, and adequacy of the proposed Class Action Settlement Agreement:

- The settlement should provide for some Eligible Seasons credit for play in the World League of American Football, the NFL Europe League, and the NFL Europa League;
- The settlement should assure that all living Retired NFL Football Players who timely register for the Settlement, who are eligible to participate in the Baseline Assessment Program, and who timely seek a BAP baseline assessment examination, will receive the examination regardless of any funding limitations in the agreement;
- The Qualifying Diagnosis of Death with CTE should include Retired NFL Football Players who die between preliminary approval and final approval of the Settlement;
- The settlement should provide a hardship provision with respect to the appeal fee for Settlement Class Members;
- The settlement should allow reasonable accommodation for Settlement Class Members who do not possess medical records in support of a Qualifying Diagnosis due to *force majeure* type events.

AND NOW, this __2nd____ day of __February_____, 2015, it is **ORDERED** that Class Counsel and the NFL Parties file a joint submission on or before February 13, 2015 that addresses these issues, either through amendments to the Class Action Settlement, or through explanations as to why the parties are unwilling to agree to amendments that address these issues.

s/Anita B. Brody

ANITA B. BRODY, J.
United States District Judge

Copies **VIA ECF** on _____ to:

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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE:
PLAYERS' CONCUSSION :
INJURY LITIGATION :

No. 2:12-md-02323-AB

MDL No. 2323

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

CIVIL ACTION NO: 14-cv-0029

V.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

Hon. Anita B. Brody

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**CLASS COUNSEL AND THE NFL PARTIES' JOINT SUBMISSION
IN RESPONSE TO THE FEBRUARY 2, 2015 ORDER OF THE COURT**

Class Counsel and Defendants National Football League and NFL Properties LLC (collectively, the “Parties”) jointly submit this response to the Court’s February 2, 2015 order (the “Order”).

INTRODUCTION

The Order directed the Parties to address the following issues related to the proposed Class Action Settlement Agreement dated June 25, 2014 (“Settlement Agreement” or “Settlement”):

- Whether the Settlement should provide for some Eligible Seasons credit for play in the World League of American Football, the NFL Europe League, and the NFL Europa League;
- How the Settlement will assure that all living Retired NFL Football Players who timely register for the Settlement, who are eligible to participate in the Baseline Assessment Program, and who timely seek a BAP baseline assessment examination, will receive the examination regardless of any funding limitations in the Settlement Agreement;
- Whether the Qualifying Diagnosis of Death with CTE should include Retired NFL Football Players who die between preliminary approval and final approval of the Settlement;
- Whether the Settlement should provide a hardship provision with respect to the appeal fee for Settlement Class Members; and
- Whether the Settlement should allow reasonable accommodation for Settlement Class Members who do not possess medical records in support of

a Qualifying Diagnosis due to *force majeure* type events.

(Doc. No. 6479.)

The Parties have met and conferred on these matters and have agreed to amend the Settlement to address each of these issues. The Settlement Agreement, as amended as of February 13, 2015, is attached as Exhibit A, and a redline showing the amendments is attached as Exhibit B. A summary of the amendments follows.

SETTLEMENT AGREEMENT AMENDMENTS

NFL Europe

The Settlement Agreement currently provides no credit for time played in certain developmental leagues, such as NFL Europe. The Settlement, as amended, provides one-half of an Eligible Season when a Retired NFL Football Player or deceased Retired NFL Football Player was on a World League of American Football, NFL Europe League, or NFL Europa League (collectively, “NFL Europe”) team’s active roster on the date of three or more regular season or postseason games or on the active roster on the date of one or more regular or postseason games, and then spent at least two regular or postseason games on the NFL Europe injured reserve list or team inactive list due to a concussion or head injury. (*See* Settlement Agreement, as amended, § 2.1(kk).) Each half of an Eligible Season may be summed together with other earned Eligible Seasons or half Eligible Seasons up to a maximum of one Eligible Season per year (with each year defined to include any spring NFL Europe season and the following fall NFL season). (*Id.* § 6.7(c).)

The above treatment of NFL Europe is fair and reasonable for several reasons. NFL Europe was a developmental league. (Decl. of T. David Gardi ¶ 14

(“Gardi Decl.”), Doc. No. 6422-33.) The Settlement, as amended, is uniform in awarding a maximum of one-half of an Eligible Season for developmental participation. (*See* Settlement Agreement, as amended, § 2.1(kk) (providing one-half of an Eligible Season for participation in at least eight regular or postseason games on an NFL Member Club’s developmental roster).) Moreover, NFL Europe is further distinguished from the NFL because it had a shorter regular season than the NFL—10 games rather than 16—and fewer practices (Gardi Decl. ¶14), further justifying a credit of one-half an Eligible Season. In addition, NFL Europe players face a particular litigation risk due to workers’ compensation exclusivity laws. (*See* NFL Parties’ Mem. of Law in Supp. of Final Approval of the Class Action Settlement Agreement and in Resp. to Objections at 110-11, Doc. No. 6422.)

Second, capping a Retired NFL Football Player’s Eligible Seasons at one Eligible Season per year is reasonable. The Parties negotiated at arm’s length and reached a compromise to limit the maximum Eligible Seasons to one, regardless of the number of games in which a Retired NFL Football Player was on an active roster. This is because an Eligible Season is a proxy for—and not a precise calculation of—exposure to alleged repetitive mild traumatic head impacts, and it establishes the minimum level of exposure needed to receive Eligible Season credit.

BAP Examination

The Settlement Agreement currently provides that all Retired NFL Football Players with at least one-half of an Eligible Season who timely register to participate in the Settlement will be entitled to one baseline assessment examination. (Settlement Agreement § 5.1; *see also id.* § 23.1(b) (\$75 million BAP Fund provided that

“every qualified Retired NFL Football Player, as set forth in Section 5.1, is entitled to one baseline assessment examination.”) Although the Parties are confident that the Settlement Agreement currently provides sufficient funding to pay the cost of these baseline assessment examinations, the Parties have agreed to amend the Settlement Agreement to add the following language to remove any ambiguity: “For the avoidance of any doubt, if the Seventy-Five Million United States dollars (U.S. \$75,000,000) is insufficient to cover the costs of one baseline assessment examination for every qualified Retired NFL Football Player electing to receive an examination by the deadline set forth in Section 5.3, the NFL Parties agree to pay the amount of money necessary to provide the examinations in accordance with this Settlement Agreement.” (Settlement Agreement, as amended, § 23.1(b); *see also id.* § 23.3(d).)

Death with CTE

The Settlement Agreement currently provides for a Death with CTE Qualifying Diagnosis for Retired NFL Football Players who died prior to the date of the Preliminary Approval and Class Certification Order and who had a post-mortem diagnosis of CTE made by a board-certified neuropathologist. (Settlement Agreement, Ex. 1.) The Settlement Agreement, as amended, extends this deadline from the date of preliminary approval to the Final Approval Date, which is defined as the date that the Court enters the Final Order and Judgment. (Settlement Agreement, as amended, §§ 2.1(mm), 6.3(f), Ex. 1.) In addition, consistent with the Parties’ intent under the original Settlement Agreement, and recognizing that obtaining such a diagnosis may take several months post-death, the Parties have provided for a grace period of 270 days following

any date of death between preliminary approval and the Final Approval Date to allow Claimants to obtain the necessary diagnosis. (*Id.* § 6.3(f), Ex. 1.)

Appeal Fee Hardship Provision

The Settlement Agreement requires a payment of \$1,000 for a Settlement Class Member to appeal determinations regarding Monetary Awards and Derivative Claimant Awards. (Settlement Agreement § 9.6(a).) The Settlement, as amended, allows Settlement Class Members to make a hardship request to the Claims Administrator for the appeal fee to be waived for good cause. (Settlement Agreement, as amended, § 9.6(a)(i).) The Claims Administrator will have sole discretion to approve or deny the request based upon a review of the Settlement Class Member's financial information as may be necessary to decide the request. (*Id.*)

Unavailability of Medical Records Due to *Force Majeure* Type Events

The Settlement Agreement requires the submission of certain medical records under specified circumstances. (*See* Settlement Agreement § 8.2(a).) The Settlement Agreement, as amended, provides a limited exception to this requirement in the event of the unavailability of the required medical records for Representative Claimants of deceased Retired NFL Football Players because—unlike living Retired NFL Football Players—deceased Retired NFL Football Players cannot return to their diagnosing physician for examination and the creation of replacement medical records.¹ In those cases where a deceased Retired NFL Football Player received a Qualifying Diagnosis in the past but the medical records reflecting the Qualifying Diagnosis are unavailable because of a *force majeure* type event (*e.g.*, flood, fire), the Settlement, as

¹ The eligibility requirements for Representative Claimants of deceased Retired NFL Football Players to receive a Monetary Award remain as set forth in Section 6.2(b).

amended, allows the Representative Claimant to petition the Claims Administrator to accept the Claim Package as valid without the medical records if the Representative Claimant makes a showing of a reasonable effort to obtain the medical records from any available source, states the reasons such records could not be obtained, and presents a certified death certificate referencing the Qualifying Diagnosis made while the Retired NFL Football Player was living. (Settlement Agreement, as amended, § 8.2(ii).) If the unavailability of medical records also causes the diagnosing physician to be unable to provide a Diagnosing Physician Certification, the Representative Claimant may petition the Claims Administrator to allow a sworn affidavit from the diagnosing physician attesting to the reasons why the diagnosing physician is unable to provide a Diagnosing Physician Certification without the medical records. (*Id.*) The sufficiency of these showings shall be in the sole discretion of the Claims Administrator, subject to the appeal rights set forth in Section 9.5 of the Settlement. (*Id.*)

* * *

In sum, the Settlement, as amended, addresses in full the issues raised by the Court. The Parties therefore respectfully request that the Court grant final approval of the Settlement, as amended.

Dated: February 13, 2015

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing document and all exhibits were served electronically via the Court's electronic filing system on the 13th day of February, 2015, upon all counsel of record.

Dated: February 13, 2015

/s/ Brad S. Karp
Brad S. Karp

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE:
PLAYERS' CONCUSSION :
INJURY LITIGATION :

No. 2:12-md-02323-AB

MDL No. 2323

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

CIVIL ACTION NO: 14-cv-0029

V.

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

CLASS ACTION SETTLEMENT AGREEMENT

(AS AMENDED)

Dated: June 25, 2014

Amended: February 13, 2015

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**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS’
CONCUSSION INJURY LITIGATION, MDL 2323,
CLASS ACTION SETTLEMENT AGREEMENT AS OF JUNE 25, 2014
(as amended as of February 13, 2015)
(subject to Court approval)**

PREAMBLE

This SETTLEMENT AGREEMENT, dated as of June 25, 2014 (the “Settlement Date”), as amended as of February 13, 2015, is made and entered into by and among defendants the National Football League (“NFL”) and NFL Properties LLC (“NFL Properties”) (collectively, “NFL Parties”), by and through their attorneys, and the Class Representatives and Subclass Representatives, individually and on behalf of the Settlement Class and Subclasses, by and through Class Counsel. This Settlement Agreement is intended by the Parties fully, finally, and forever to resolve, discharge, and settle all Released Claims against the Released Parties, as set forth below, subject to review and approval by the Court.¹

RECITALS

A. On January 31, 2012, a federal multidistrict litigation was established in the United States District Court for the Eastern District of Pennsylvania, In re: National Football League Players’ Concussion Injury Litigation, MDL No. 2323. Plaintiffs in MDL No. 2323 filed a Master Administrative Long-Form Complaint and a Master Administrative Class Action Complaint for Medical Monitoring on June 7, 2012. Plaintiffs filed an Amended Master Administrative Long-Form Complaint on July 17, 2012. Additional similar lawsuits are pending in various state and federal courts.

B. The lawsuits arise from the alleged effects of mild traumatic brain injury allegedly caused by the concussive and sub-concussive impacts experienced by former NFL Football players. Plaintiffs seek to hold the NFL Parties responsible for their alleged injuries under various theories of liability, including that the NFL Parties allegedly breached a duty to NFL Football players to warn and protect them from the long-term health problems associated with concussions and that the NFL Parties allegedly concealed and misrepresented the connection between concussions and long-term chronic brain injury.

C. On August 30, 2012, the NFL Parties filed motions to dismiss the Master Administrative Class Action Complaint for Medical Monitoring and the Amended Master Administrative Long-Form Complaint on preemption grounds. Plaintiffs filed their oppositions to the motions on October 31, 2012, the NFL Parties filed reply memoranda of law on December 17, 2012, and plaintiffs filed sur-reply memoranda of law on January 28, 2013. Oral argument on the NFL Parties’ motions to dismiss on preemption grounds was held on April 9, 2013.

¹ Capitalized terms have the meanings provided in ARTICLE II, unless a section or subsection of this Settlement Agreement provides otherwise.

F. On January 6, 2014, Class Counsel moved the Court for an order, among other things, granting preliminary approval of the proposed settlement and conditionally certifying a settlement class and subclasses. On January 14, 2014, the Court denied that motion without prejudice.

H. The NFL Parties deny the Class and Subclass Representatives' allegations, and the allegations in Related Lawsuits, and deny any liability to the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member for any claims, causes of action, costs, expenses, attorneys' fees, or damages of any kind, and would assert a number of substantial legal and factual defenses against plaintiffs' claims if they were litigated to conclusion.

JA5858

L. The Parties desire to settle, compromise, and resolve fully all Released Claims.

N. This Settlement Agreement will not be construed as evidence of, or as an admission by, the NFL Parties of any liability or wrongdoing whatsoever or as an admission by the Class or Subclass Representatives, or Settlement Class Members, of any lack of merit in their claims.

JA5859

sufficiency of which are hereby acknowledged, this action shall be settled and compromised under the following terms and conditions:

ARTICLE I

Definitions of Settlement Class and Subclasses

Section 1.1 Definition of Settlement Class

(a) “Settlement Class” means all Retired NFL Football Players, Representative Claimants and Derivative Claimants.

(b) Excluded from the Settlement Class are any Retired NFL Football Players, Representative Claimants or Derivative Claimants who timely and properly exercise the right to be excluded from the Settlement Class (“Opt Outs”).

Section 1.2 Definition of Subclasses

(a) “Subclass 1” means Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants.

(b) “Subclass 2” means Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a post-mortem diagnosis of CTE.

ARTICLE II

Definitions

Section 2.1 Definitions

For the purposes of this Settlement Agreement, the following terms (designated by initial capitalization throughout this Agreement) will have the meanings set forth in this Section.

Unless the context requires otherwise, (i) words expressed in the masculine will include the feminine and neuter gender and vice versa; (ii) the word “will” shall be construed to have the same meaning and effect as the word “shall”; (iii) the word “or” will not be exclusive; (iv) the word “extent” in the phrase “to the extent” will mean the degree to which a subject or other thing extends, and such phrase will not simply mean “if”; (v) references to “day” or “days” in the lower case are to calendar days, but if the last day is a Saturday, Sunday, or legal holiday (as defined in Fed. R. Civ. P. 6(a)(6)), the period will continue to run until the end of the next day that is not a Saturday, Sunday, or legal holiday; (vi) references to this Settlement Agreement will include all

exhibits, schedules, and annexes hereto; (vii) references to any law will include all rules and regulations promulgated thereunder; (viii) the terms “include,” “includes,” and “including” will be deemed to be followed by “without limitation,” whether or not they are in fact followed by such words or words of similar import; and (ix) references to dollars or “\$” are to United States dollars.

(a) “Active List” means the list of all players physically present, eligible and under contract to play for a Member Club on a particular game day within any applicable roster or squad limits set forth in the applicable NFL or American Football League Constitution and Bylaws.

(b) “Affiliate” means, with respect to any person or entity, any other person or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person or entity, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies, whether through the ownership of voting shares, by contract, or otherwise.

(c) “ALS” means amyotrophic lateral sclerosis, also known as Lou Gehrig’s Disease, as defined in Exhibit 1.

(d) “Alzheimer’s Disease” is defined in Exhibit 1.

(e) “American Football League” means the former professional football league that merged with the NFL.

(f) “Appeals Form” means that document that Settlement Class Members, the NFL Parties or Co-Lead Class Counsel, as the case may be, will submit when appealing Monetary Award or Derivative Claimant Award determinations by the Claims Administrator, as set forth in Section 9.7.

(g) “Appeals Advisory Panel” means a panel of physicians, composed of, in any combination, five (5) board-certified neurologists, board-certified neurosurgeons, and/or other board-certified neuro-specialist physicians agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, any one of whom is eligible to advise the Court or the Special Master with respect to medical aspects of the Class Action Settlement and to perform the other duties of the Appeals Advisory Panel set forth in this Settlement Agreement.

(h) “Appeals Advisory Panel Consultants” means three (3) neuropsychologists certified by the American Board of Professional Psychology (ABPP) or the American Board of Clinical Neuropsychology (ABCN), a member board of the American Board of Professional Psychology, in the specialty of Clinical Neuropsychology, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, any one of whom is eligible to advise a member of the Appeals Advisory Panel, the Court, or the Special Master on the neuropsychological testing referenced in Exhibits 1 and 2 to the Settlement Agreement, as pertaining to the Qualifying Diagnoses of Level 1.5 Neurocognitive Impairment and

Level 2 Neurocognitive Impairment, and Level 1 Neurocognitive Impairment if subject to review as set forth in Section 5.13. Appeals Advisory Panel Consultants do not meet the definition of Appeals Advisory Panel members and shall not serve as members of the Appeals Advisory Panel.

(i) “Baseline Assessment Program” (“BAP”) means the program described in ARTICLE V.

(j) “Baseline Assessment Program Supplemental Benefits” or “BAP Supplemental Benefits” means medical treatment, including, as needed, counseling and pharmaceutical coverage, for Level 1 Neurocognitive Impairment (as set forth in Exhibit 1) within a network of Qualified BAP Providers and Qualified BAP Pharmacy Vendor(s), respectively, established by the BAP Administrator, as set forth in Section 5.11.

(k) “Baseline Assessment Program Fund Administrator” or “BAP Administrator” means that person(s) or entity, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, to perform the responsibilities assigned to the BAP Administrator under this Settlement Agreement, including, without limitation, as set forth in ARTICLE V.

(l) “Baseline Assessment Program Fund” or “BAP Fund” means the fund to pay BAP costs and expenses, as set forth in ARTICLE V.

(m) “Claim Form” means that document to be submitted to the Claims Administrator by a Settlement Class Member who is a Retired NFL Football Player or Representative Claimant claiming a Monetary Award, as set forth in ARTICLE VIII.

(n) “Claim Package” means the Claim Form and other documentation, as set forth in Section 8.2(a).

(o) “Claims Administrator” means that person(s) or entity, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, to perform the responsibilities assigned to the Claims Administrator under this Settlement Agreement, including, without limitation, as set forth in Section 10.2.

(p) “Class Action Complaint” means the complaint captioned Plaintiffs’ Class Action Complaint filed on consent in the Court on January 6, 2014.

(q) “Class Action Settlement” means that settlement set forth in this Settlement Agreement.

(r) “Class Counsel” means, pending Court appointment, the counsel who are so designated and who are signatories to this Settlement Agreement, namely, Co-Lead Class Counsel, Christopher A. Seeger and Sol Weiss, Subclass Counsel, Arnold Levin and Dianne M. Nast, and Steven C. Marks of Podhurst Orseck,

P.A. and Gene Locks of Locks Law Firm, and, upon appointment, such other counsel as the Court may appoint to represent the Settlement Class.

(s) “Class Representatives” means Shawn Wooden and Kevin Turner, or such other or different persons as may be appointed by the Court as the representatives of the Settlement Class.

(t) “CMS” means the Centers for Medicare & Medicaid Services, the agency within the United States Department of Health and Human Services responsible for administration of the Medicare Program and the Medicaid Program.

(u) “Co-Lead Class Counsel” means, pending Court appointment, the counsel who are so designated and who are signatories to this Settlement Agreement, namely, Christopher A. Seeger of Seeger Weiss LLP and Sol Weiss of Anapol Schwartz, and, upon appointment, such other counsel as the Court may appoint to represent the Settlement Class in a lead role.

(v) “Collective Bargaining Agreement” means the August 4, 2011 Collective Bargaining Agreement between the NFL Management Council and the NFL Players Association, individually and together with all previous and future NFL Football collective bargaining agreements governing NFL Football players.

(w) “Counsel for the NFL Parties” means Paul, Weiss, Rifkind, Wharton & Garrison LLP, or any law firm or attorney so designated in writing by the NFL Parties.

(x) “Court” means the United States District Court for the Eastern District of Pennsylvania, Judge Anita Brody (or any successor judge designated by the United States District Court for the Eastern District of Pennsylvania, or a magistrate judge designated by Judge Brody or such designated successor judge, as set forth in and pursuant to Federal Rule of Civil Procedure 72), presiding in In re: National Football League Players’ Concussion Injury Litigation, MDL No. 2323. For the period of time from the Effective Date up to and including the fifth year of the Class Action Settlement, the Parties agree, in accordance with the provisions of 28 U.S.C. § 636(c), to waive their right to proceed before a judge of the United States District Court in connection with issues relating to the administration of this Settlement Agreement where the Court is required or requested to act, and consent to have a United States Magistrate Judge conduct such proceedings.

(y) “Covenant Not to Sue” means the covenant not to sue set forth in Section 18.4.

(z) “CTE” means Chronic Traumatic Encephalopathy.

(aa) “Death with CTE” is defined in Exhibit 1.

(bb) “Deficiency” means any failure of a Settlement Class Member to provide required information or documentation to the Claims Administrator, as set forth in Section 8.5.

(cc) “Derivative Claim Form” means that document to be submitted to the Claims Administrator by a Settlement Class Member who is a Derivative Claimant claiming a Derivative Claimant Award, as set forth in ARTICLE VIII.

(dd) “Derivative Claim Package” means the Derivative Claim Form and other documentation, as set forth in Section 8.2(b).

(ee) “Derivative Claimants” means spouses, parents, children who are dependents, or any other persons who properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player.

(ff) “Derivative Claimant Award” means the payment of money from the Monetary Award of the subject Retired NFL Football Player to a Settlement Class Member who is a Derivative Claimant, as set forth in ARTICLE VII.

(gg) “Diagnosing Physician Certification” means that document which a Settlement Class Member who is a Retired NFL Football Player or Representative Claimant must submit either as part of a Claim Package in order to receive a Monetary Award, as set forth in Section 8.2(a), or to receive BAP Supplemental Benefits, as set forth in Section 5.11, the contents of which shall be agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties and that shall include, without limitation: (i) a certification under penalty of perjury by the diagnosing physician that the information provided is true and correct, (ii) the Qualifying Diagnosis being made consistent with the criteria in Exhibit 1 (Injury Definitions) and the date of diagnosis, and (iii) the qualifications of the diagnosing physician, including, without limitation, whether the diagnosing physician is a Qualified MAF Physician.

(hh) “Education Fund” means a fund to support education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of Retired NFL Football Players regarding the NFL CBA Medical and Disability Benefits programs, and other educational initiatives benefitting Retired NFL Football Players, as set forth in ARTICLE XII.

(ii) “Education Fund Amount” means the amount of Ten Million United States dollars (U.S. \$10,000,000), as set forth in Section 23.1(c).

(jj) “Effective Date” means (i) the day following the expiration of the deadline for appealing the entry by the Court of the Final Order and Judgment approving the Settlement Agreement and certifying the Settlement Class (or for appealing any ruling on a timely motion for reconsideration of such Final Order, whichever is later), if no such appeal is filed; or (ii) if an appeal of the Final Order and Judgment is filed, the date upon which all appellate courts with jurisdiction (including the United States

Supreme Court by petition for certiorari) affirm such Final Order and Judgment, or deny any such appeal or petition for certiorari, such that no future appeal is possible.

(kk) “Eligible Season” means a season in which a Retired NFL Football Player or deceased Retired NFL Football Player was: (i) on a Member Club’s Active List on the date of three (3) or more regular season or postseason games; or (ii) on a Member Club’s Active List on the date of one (1) or more regular or postseason games, and then spent at least two (2) regular or postseason games on a Member Club’s injured reserve list or inactive list due to a concussion or head injury. A “half of an Eligible Season” means a season in which a Retired NFL Football Player or deceased Retired NFL Football Player was: (i) on a Member Club’s practice, developmental, or taxi squad roster for at least eight (8) regular or postseason games; or (ii) on a World League of American Football, NFL Europe League, or NFL Europa League team’s active roster on the date of three (3) or more regular season or postseason games or on the active roster on the date of one (1) or more regular or postseason games, and then spent at least two (2) regular or postseason games on the World League of American Football, NFL Europe League, or NFL Europa League injured reserve list or team inactive list due to a concussion or head injury.

(ll) “Fairness Hearing” means the hearing scheduled by the Court to consider the fairness, reasonableness, and adequacy of this Settlement Agreement under Rule 23(e)(2) of the Federal Rules of Civil Procedure, and to determine whether a Final Order and Judgment should be entered.

(mm) “Final Approval Date” means the date on which the Court enters the Final Order and Judgment.

(nn) “Final Order and Judgment” means the final judgment and order entered by the Court, substantially in the form of Exhibit 4, and as set forth in ARTICLE XX.

(oo) “Funds” means the Settlement Trust Account, the BAP Fund, the Monetary Award Fund, and the Education Fund.

(pp) “Governmental Payor” means any federal, state, or other governmental body, agency, department, plan, program, or entity that administers, funds, pays, contracts for, or provides medical items, services, and/or prescription drugs, including, but not limited to, the Medicare Program, the Medicaid Program, Tricare, the Department of Veterans Affairs, and the Department of Indian Health Services.

(qq) “HIPAA” means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (1996) (codified as amended in scattered sections of 42 U.S.C.) and the implementing regulations issued by the United States Department of Health and Human Services thereunder, and incorporates by reference the provisions of the Health Information Technology for Economic and Clinical Health Act (Title XIII of

Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009)) pertaining to Protected Health Information.

(rr) “Level 1 Neurocognitive Impairment” is defined in Exhibit 1.

(ss) “Level 1.5 Neurocognitive Impairment” is defined in Exhibit 1.

(tt) “Level 2 Neurocognitive Impairment” is defined in Exhibit 1.

(uu) “Lien” means any statutory lien of a Government Payor or Medicare Part C or Part D Program sponsor; or any mortgage, lien, pledge, charge, security interest, or legal encumbrance, of any nature whatsoever, held by any person or entity, where there is a legal obligation to withhold payment of a Monetary Award, Supplemental Monetary Award, Derivative Claimant Award, or some portion thereof, to a Settlement Class Member under applicable federal or state law.

(vv) “Lien Resolution Administrator” means that person(s) or entity, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, to perform the responsibilities assigned to the Lien Resolution Administrator under this Settlement Agreement, including, without limitation, as set forth in ARTICLE XI.

(ww) “Medicaid Program” means the federal program administered by the states under which certain medical items, services, and/or prescription drugs are furnished to Medicaid beneficiaries under Title XIX of the Social Security Act, 42 U.S.C. § 1396–1, *et seq.*

(xx) “Medicare Part C or Part D Program” means the program(s) under which Medicare Advantage, Medicare cost, and Medicare health care prepayment plan benefits and Medicare Part D prescription drug plan benefits are administered by private entities that contract with CMS.

(yy) “Medicare Program” means the Medicare Parts A and B federal program administered by CMS under which certain medical items, services, and/or prescription drugs are furnished to Medicare beneficiaries under Title XVIII of the Social Security Act, 42 U.S.C. § 1395, *et seq.*

(zz) “Member Club” means any past or present member club of the NFL or any past member club of the American Football League.

(aaa) “Monetary Award” means the payment of money from the Monetary Award Fund to a Settlement Class Member, other than a Derivative Claimant, as set forth in ARTICLE VI. The term “Monetary Award” shall also include “Supplemental Monetary Award” with respect to the claims process set forth in this

Settlement Agreement, including, without limitation, relating to submission and approval of claims, calculation and distribution of awards, and appeals.

(bbb) “Monetary Award Fund” or “MAF” means the sixty-five (65) year fund, as set forth in Section 6.10.

(ccc) “Monetary Award Grid” means that document attached as Exhibit 3.

(ddd) “MSP Laws” means the Medicare Secondary Payer Act set forth at 42 U.S.C. § 1395y(b), as amended from time to time, and implementing regulations, and other applicable written CMS guidance.

(eee) “NFL CBA Medical and Disability Benefits” means any disability or medical benefits available under the Collective Bargaining Agreement, including the benefits available under the Bert Bell/Pete Rozelle NFL Player Retirement Plan; NFL Player Supplemental Disability Plan, including the Neuro-Cognitive Disability Benefit provided for under Article 65 of the Collective Bargaining Agreement; the 88 Plan; Gene Upshaw NFL Player Health Reimbursement Account Plan; Former Player Life Improvement Plan; NFL Player Insurance Plan; and/or the Long Term Care Insurance Plan.

(fff) “NFL Football” means the sport of professional football as played in the NFL, the American Football League, the World League of American Football, the NFL Europe League, and the NFL Europa League. NFL Football excludes football played by all other past, present or future professional football leagues, including, without limitation, the All-American Football Conference.

(ggg) “NFL Medical Committees” means the various past and present medical committees, subcommittees and panels that operated or operate at the request and/or direction of the NFL, whether independent or not, including, without limitation, the Injury and Safety Panel, Mild Traumatic Brain Injury Committee, Head Neck and Spine Medical Committee, Foot and Ankle Subcommittee, Cardiovascular Health Subcommittee, and Medical Grants Subcommittee, and all persons, whether employees, agents or independent of the NFL, who at any time were members of or participated on each such panel, committee, or subcommittee.

(hhh) “Notice of Challenge Determination” means the written notice set forth in Section 4.3(a)(ii)-(iv).

(iii) “Notice of Deficiency” means that document that the Claims Administrator sends to any Settlement Class Member whose Claim Package or Derivative Claim Package contains a Deficiency, as set forth in Section 8.5.

(jjj) “Notice of Derivative Claimant Award Determination” means the written notice set forth in Section 9.2(a)-(b).

(kkk) “Notice of Monetary Award Claim Determination” means the written notice set forth in Section 9.1(b)-(c).

(lll) “Notice of Registration Determination” means the written notice set forth in Section 4.3.

(mmm) “Offsets” means downward adjustments to Monetary Awards, as set forth in Section 6.7(b).

(nnn) “Opt Out,” when used as a verb, means the process by which any Retired NFL Football Player, Representative Claimant or Derivative Claimant otherwise included in the Settlement Class exercises the right to exclude himself or herself from the Settlement Class in accordance with Fed. R. Civ. P. 23(c)(2).

(ooo) “Opt Outs,” when used as a noun, means those Retired NFL Football Players, Representative Claimants and Derivative Claimants who would otherwise have been included in the Settlement Class and who have timely and properly exercised their rights to Opt Out and therefore, after the Final Approval Date, are not Settlement Class Members.

(ppp) “Other Party” means every person, entity, or party other than the Released Parties.

(qqq) “Parkinson’s Disease” is defined in Exhibit 1.

(rrr) “Parties” means the Class Representatives and Subclass Representatives, individually and on behalf of the Settlement Class and Subclasses, and the NFL Parties.

(sss) “Personal Signature” means the actual signature by the person whose signature is required on the document. Unless otherwise specified in this Settlement Agreement, a document requiring a Personal Signature may be submitted by an actual original “wet ink” signature on hard copy, or a PDF or other electronic image of an actual signature, but cannot be submitted by an electronic signature within the meaning of the Electronic Records and Signatures in Commerce Act, 15 U.S.C. §§7001, *et seq.*, the Uniform Electronic Transactions Act, or their successor acts.

(ttt) “Preliminary Approval and Class Certification Order” means the order, upon entry by the Court, preliminarily approving the Class Action Settlement and conditionally certifying the Settlement Class and Subclasses.

(uuu) “Protected Health Information” means individually identifiable health information, as defined in 45 C.F.R. § 160.103.

(vvv) “Qualified BAP Providers” means neuropsychologists certified by the American Board of Professional Psychology (ABPP) or the American Board of Clinical Neuropsychology (ABCN), a member board of the American Board of Professional Psychology, in the specialty of Clinical Neuropsychology, and board-

certified neurologists, eligible to conduct baseline assessments of Retired NFL Football Players under the BAP, as set forth in Section 5.7(a).

(www) “Qualified MAF Physician” means a board-certified neurologist, board-certified neurosurgeon, or other board-certified neuro-specialist physician, who is part of an approved list of physicians authorized to make Qualifying Diagnoses, as set forth in Section 6.5.

(xxx) “Qualified Pharmacy Vendor(s)” means one or more nationwide mail order pharmacies contracted to provide approved pharmaceutical prescriptions as part of the BAP Supplemental Benefits, as set forth in Section 5.7(b).

(yyy) “Qualifying Diagnosis” or “Qualifying Diagnoses” means Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, Alzheimer’s Disease, Parkinson’s Disease, ALS, and/or Death with CTE, as set forth in Exhibit 1 (Injury Definitions).

(zzz) “Related Lawsuits” means all past, present and future actions brought by one or more Releasors against one or more Released Parties pending in the Court, other than the Class Action Complaint, or in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum that arise out of, are based upon or are related to the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, alleged, or referred to in the Class Action Complaint, except that Settlement Class Members’ claims for workers’ compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits are not Related Lawsuits.

(aaaa) “Released Claims” means those claims released as set forth in Section 18.1 and Section 18.2.

(bbbb) “Released Parties” for purposes of the Released Claims means (i) the NFL Parties (including all persons, entities, subsidiaries, divisions, and business units composed thereby), together with (ii) each of the Member Clubs, (iii) each of the NFL Parties’ and Member Clubs’ respective past, present, and future agents, directors, officers, employees, independent contractors, general or limited partners, members, joint venturers, shareholders, attorneys, trustees, insurers (solely in their capacities as liability insurers of those persons or entities referred to in subparagraphs (i) and (ii) above and/or arising out of their relationship as liability insurers to such persons or entities), predecessors, successors, indemnitees, and assigns, and their past, present, and future spouses, heirs, beneficiaries, estates, executors, administrators, and personal representatives, including, without limitation, all past and present physicians who have been employed or retained by any Member Club and members of all past and present NFL Medical Committees; and (iv) any natural, legal, or juridical person or entity acting on behalf of or having liability in respect of the NFL Parties or the Member Clubs, in their respective capacities as such; and, as to (i)-(ii) above, each of their respective Affiliates, including their Affiliates’ officers, directors, shareholders, employees, and agents. For the avoidance of any doubt, Riddell is not a Released Party.

(cccc) “Releases” means the releases set forth in ARTICLE XVIII.

(dddd) “Releasors” means the releasors set forth in Section 18.1.

(eeee) “Representative Claimants” means authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players.

(ffff) “Retired NFL Football Players” means all living NFL Football players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players, or were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and who no longer are under contract to a Member Club and are not seeking active employment as players with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club.

(gggg) “Riddell” means Riddell, Inc.; All American Sports Corporation; Riddell Sports Group, Inc.; Easton-Bell Sports, Inc.; Easton-Bell Sports, LLC; EB Sports Corp.; and RBG Holdings Corp., and each of their respective past, present, and future Affiliates, directors, officers, employees, general or limited partners, members, joint venturers, shareholders, agents, trustees, insurers (solely in their capacities as such), reinsurers (solely in their capacities as such), predecessors, successors, indemnitees, and assigns.

(hhhh) “Settlement Agreement” means this Settlement Agreement and all accompanying exhibits, including any subsequent amendments thereto and any exhibits to such amendments.

(iiii) “Settlement Class and Subclasses” is defined in Section 1.1 and Section 1.2.

(jjjj) “Settlement Class Member” means each Retired NFL Football Player, Representative Claimant and/or Derivative Claimant in the Settlement Class; provided, however, that the term Settlement Class Member as used herein with respect to any right or obligation after the Final Approval Date does not include any Opt Outs.

(kkkk) “Settlement Class Notice” means that notice, in the form of Exhibit 5, and as set forth in Section 14.1, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and approved by the Court.

(llll) “Settlement Class Notice Agent” means that person or entity who will implement the Settlement Class Notice Plan and who will be responsible for the publication and provision of the Settlement Class Notice and Settlement Class Supplemental Notice.

(mmmm) “Settlement Class Notice Payment” means Four Million United States dollars (U.S. \$4,000,000), as set forth in Sections 23.1(d) and 23.3(e), for the costs of Settlement Class Notice, any supplemental notice required, including, without limitation, the Settlement Class Supplemental Notice, and compensation of the Settlement Class Notice Agent and the Claims Administrator to the extent the Claims Administrator performs notice-related duties that have been agreed to by the NFL Parties.

(nnnn) “Settlement Class Notice Plan” means that document which sets forth the methods, timetable, and responsibilities for providing Settlement Class Notice to Settlement Class Members, as set forth in Section 14.1.

(oooo) “Settlement Class Supplemental Notice” means that notice, as set forth in Section 14.1(d), as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and approved by the Court.

(pppp) “Settlement Date” means the date by which Class Counsel and Counsel for the NFL Parties have all signed the Settlement Agreement dated June 25, 2014 on behalf of the Class and Subclass Representatives, Settlement Class and Subclasses, and the NFL Parties, respectively.

(qqqq) “Settlement Trust” means the trust enacted pursuant to the Settlement Trust Agreement, as set forth in Section 23.5.

(rrrr) “Settlement Trust Account” means that account created under the Settlement Trust Agreement and held by the Trustee into which the NFL Parties will make payments pursuant to ARTICLE XXIII of this Settlement Agreement.

(ssss) “Settlement Trust Agreement” means the agreement that will establish the Settlement Trust and will be entered into by Co-Lead Class Counsel, the NFL Parties, and the Trustee, as set forth in Section 23.5(c).

(tttt) “Signature” means the actual signature by the person whose signature is required on the document, or on behalf of such person by a person authorized by a power of attorney or equivalent document to sign such documents on behalf of such person. Unless otherwise specified in this Settlement Agreement, a document requiring a Signature may be submitted by: (i) an actual original “wet ink” signature on hard copy; (ii) a PDF or other electronic image of an actual signature; or (iii) an electronic signature within the meaning of the Electronic Records and Signatures in Commerce Act, 15 U.S.C. §§7001, *et seq.*, the Uniform Electronic Transactions Act, or their successor acts.

(uuuu) “Special Master” means that person appointed by the Court pursuant to Federal Rule of Civil Procedure 53 to oversee the administration of the Settlement Agreement, as set forth in Section 10.1.

(vvvv) “Stadium Program Bonds” means the NFL’s G3 and G4 bonds.

(www) “Stroke” means stroke, as defined by the World Health Organization’s International Classification of Diseases, 9th Edition (ICD-9) or the World Health Organization’s International Classification of Diseases, 10th Edition (ICD-10), which occurs prior to or after the time the Retired NFL Football Player played NFL Football. A medically diagnosed Stroke does not include a transient cerebral ischaemic attack and related syndromes, as defined by ICD-10.

(xxxx) “Subclass Counsel” means, pending Court appointment, the counsel who are so designated and who are signatories to this Settlement Agreement, namely Arnold Levin of Levin, Fishbein, Sedran & Berman for Subclass 1, and Dianne M. Nast of NastLaw LLC for Subclass 2, and, upon appointment, such other counsel as the Court may appoint to represent the Settlement Subclasses 1 and 2.

(yyyy) “Subclass Representatives” means Shawn Wooden and Kevin Turner, or such other or different persons as may be designated by the Court as the representatives of the Settlement Subclasses 1 and 2.

(zzzz) “Supplemental Monetary Award” means the supplemental payment of monies from the Monetary Award Fund to a Settlement Class Member, as set forth in Section 6.8.

(aaaaa) “Traumatic Brain Injury” means severe traumatic brain injury unrelated to NFL Football play, that occurs during or after the time the Retired NFL Football Player played NFL Football, consistent with the definitions in the World Health Organization’s International Classification of Diseases, 9th Edition (ICD-9), Codes 854.04, 854.05, 854.14 and 854.15, and the World Health Organization’s International Classification of Diseases, 10th Edition (ICD-10), Codes S06.9x5 and S06.9x6.

(bbbbb) “Tricare” means the federal program managed and administered by the United States Department of Defense through the Tricare Management Activity under which certain medical items, services, and/or prescription drugs are furnished to eligible members of the military services, military retirees, and military dependents under 10 U.S.C. § 1071, *et seq.*

(ccccc) “Trustee” means that person or entity approved by the Court as trustee of the Settlement Trust Account and as administrator of the qualified settlement fund for purposes of Treasury Regulation §1.468B-2(k)(3), as set forth in ARTICLE XXIII.

ARTICLE III

Settlement Benefits for Class Members

Section 3.1 The Class and Subclass Representatives, by and through Class Counsel and Subclass Counsel, and the NFL Parties, by and through Counsel for the NFL Parties, agree that, in consideration of the Releases and Covenant Not to Sue set forth in ARTICLE XVIII, and the dismissal with prejudice of the Class Action Complaint and the Related Lawsuits, and subject to the terms and conditions of this Settlement Agreement, the NFL Parties will, in addition to other obligations set forth in this Settlement Agreement:

(a) Pay all final Monetary Awards and Derivative Claimant Awards to those Settlement Class Members who qualify for such awards pursuant to the requirements and criteria set forth in this Settlement Agreement;

(b) Provide qualified Settlement Class Members who are Retired NFL Football Players with the option to participate in the BAP and receive a BAP baseline assessment examination and BAP Supplemental Benefits, if eligible, pursuant to the requirements and criteria set forth in this Settlement Agreement; and

(c) Establish the Education Fund to support education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of Retired NFL Football Players regarding the NFL CBA Medical and Disability Benefits programs, and other educational initiatives benefitting Retired NFL Football Players, as set forth in ARTICLE XII.

ARTICLE IV

Information and Registration Process

Section 4.1 Information

(a) Within ten (10) days after the Preliminary Approval and Class Certification Order, Co-Lead Class Counsel will cause to be established and maintained a public website containing information about the Class Action Settlement (the “Settlement Website”), including the Settlement Class Notice and “Frequently Asked Questions.” Within ninety (90) days after the Effective Date, Co-Lead Class Counsel will cause the Settlement Website to be transitioned for claims administration purposes. The Settlement Website will be the launching site for secure web-based portals established and maintained by the Claims Administrator, BAP Administrator, and/or Lien Resolution Administrator for use by Settlement Class Members and their designated attorneys throughout the term of the Class Action Settlement. The Claims Administrator will post all necessary information about the Class Action Settlement on the Settlement Website, including, as they become available, information about registration deadlines and methods to participate in the BAP, the Claim Package requirements and Monetary Awards, and the Derivative Claim Package requirements and Derivative Claimant

Awards. All content posted on the Settlement Website will be subject to advance approval by Co-Lead Class Counsel and Counsel for the NFL Parties.

(b) Within ten (10) days after the Preliminary Approval and Class Certification Order, Co-Lead Class Counsel also will cause to be established and maintained an automated telephone system that uses a toll-free number or numbers to provide information about the Class Action Settlement. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel will cause the automated telephone system to be transitioned for claims administration purposes. Through this system, Settlement Class Members may request and obtain copies of the Settlement Class Notice, Settlement Agreement, Claim Form, Derivative Claim Form, and Appeals Form, and they may speak with operators for further information.

Section 4.2 Registration Methods and Requirements

(a) The Claims Administrator will establish and administer both online and hard copy registration methods for participation in the Class Action Settlement.

(b) The registration requirements will include information sufficient to determine if a registrant is a Settlement Class Member, including: (i) name; (ii) address; (iii) date of birth; (iv) Social Security Number (if any); (v) email address (if any), and whether email, the web-based portal on the Settlement Website, or U.S. mail is the preferred method of communication; (vi) identification as a Retired NFL Football Player, Representative Claimant or Derivative Claimant; (vii) dates and nature of NFL Football employment (*e.g.*, Active List, practice squad, developmental squad), and corresponding identification of the employer Member Club(s) or assigned team(s) (for Retired NFL Football Players, or, for the subject Retired NFL Football Player or deceased Retired NFL Football Player in the case of Representative Claimants and Derivative Claimants); and (viii) Signature of the registering purported Settlement Class Member.

(i) In addition to the registration requirements in this Section 4.2(b), Representative Claimants also will identify the subject deceased or legally incapacitated or incompetent Retired NFL Football Player, including name, last known address, date of birth, and Social Security Number (if any), and will provide a copy of the court order, or other document issued by an official of competent jurisdiction, providing the authority to act on behalf of that deceased or legally incapacitated or incompetent Retired NFL Football Player.

(ii) In addition to the registration requirements in this Section 4.2(b), Derivative Claimants also will identify the subject Retired NFL Football Player or deceased Retired NFL Football Player and the relationship by which they assert the right under applicable state law to sue independently or derivatively.

(c) Unless good cause, as set forth in subsection (i), is shown, Settlement Class Members must register on or before 180 days from the date that the

Settlement Class Supplemental Notice is posted on the Settlement Website. If a Settlement Class Member does not register by that deadline, that Settlement Class Member will be deemed ineligible for the BAP and BAP Supplemental Benefits, Monetary Awards and Derivative Claimant Awards.

(i) Good cause will include, without limitation, (a) that a Settlement Class Member who is a Representative Claimant had not been ordered by a court or other official of competent jurisdiction to be the authorized representative of the subject deceased or legally incapacitated or incompetent Retired NFL Football Player prior to the registration deadline (and the Representative Claimant seeks to register within 180 days of authorization by the court or other official of competent jurisdiction), or (b) that the subject Retired NFL Football Player timely registered prior to his death or becoming legally incapacitated or incompetent and his Representative Claimant seeks to register for that Retired NFL Football Player; or (c) that the subject Retired NFL Football Player timely registered and the Derivative Claimant seeks to register within thirty (30) days of that Retired NFL Football Player's submission of a Claim Package.

Section 4.3 Registration Review

(a) Upon receipt of a purported Settlement Class Member's registration, the Claims Administrator will review the information to determine whether the purported Settlement Class Member is a Settlement Class Member under the Settlement Agreement, and whether he or she has timely registered. In order to determine qualification for the BAP, as set forth in Section 5.1, the Claims Administrator will also determine if a registering Retired NFL Football Player has identified his participation in NFL Football that earns him at least one half of an Eligible Season. The Claims Administrator will then issue a favorable or adverse Notice of Registration Determination, within forty-five (45) days of receipt of the purported Settlement Class Member's registration, informing the purported Settlement Class Member whether he or she is a Settlement Class Member who has properly registered. To the extent the volume of registrations warrants, this deadline may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties.

(i) Favorable Notices of Registration Determination will include information regarding the sections of the Settlement Website and/or secure web-based portals that provide detailed information regarding the Claim Package and Monetary Awards, the Derivative Claim Package and Derivative Claimant Awards and, for Settlement Class Members who are Retired NFL Football Players, information regarding the BAP. The Notice of Registration Determination will inform the Settlement Class Member of his or her unique identifying number for future use, including on a Claim Form or Derivative Claimant Form.

(ii) Adverse Notices of Registration Determination will include information regarding how the purported Settlement Class Member can challenge the determination. The purported Settlement Class Member may submit a written challenge to the Claims Administrator within sixty (60) days after the date of the Notice of Registration Determination. The purported Settlement Class Member must present a

sworn statement or other evidence in support of any written challenge. The Claims Administrator will make a determination on the written challenge and issue a Notice of Challenge Determination to the purported Settlement Class Member and the NFL Parties informing them of the decision.

(iii) The NFL Parties can challenge, for good cause, a favorable Notice of Registration Determination by submitting a written challenge to the Claims Administrator within sixty (60) days after the date of the Notice of Registration Determination. The NFL Parties must present evidence in support of the written challenge. The Claims Administrator will make a determination on the written challenge and issue a Notice of Challenge Determination to the purported Settlement Class Member and the NFL Parties informing them of the decision.

(iv) Any Notice of Challenge Determination may be appealed by the purported Settlement Class Member or the NFL Parties, provided that the NFL Parties' appeal is limited to challenging the purported Retired NFL Football Player's or subject Retired NFL Football Player's status as a Retired NFL Football Player, in writing to the Court within sixty (60) days after the date of the Notice of Challenge Determination. The parties may present evidence in support of, or in opposition to, the appeal. The Court will be provided access to all documents and information available to the Claims Administrator to aid in determining the appeal. The Court may, in its discretion, refer the appeal to the Special Master. The decision of the Court or the Special Master shall be final and binding.

(v) If either Co-Lead Class Counsel or Counsel for the NFL Parties believe that the Claims Administrator has issued a Notice of Registration Determination that reflects an improper interpretation of the Settlement Class definition set forth in Section 1.1, such counsel may petition the Court to resolve the issue. The Court may, in its discretion, refer the matter to the Special Master. If the Court or the Special Master determines that the Claims Administrator misinterpreted the Settlement Class definition, the decision of the Court or the Special Master will supersede the prior determination by the Claims Administrator.

ARTICLE V

Baseline Assessment Program

Section 5.1 Qualification. All Retired NFL Football Players with at least one half of an Eligible Season, as defined in Section 2.1(kk), who timely registered to participate in the Class Action Settlement, as set forth in ARTICLE IV, will qualify for the BAP and will be entitled to one (1) baseline assessment examination as provided in Section 5.2. For the avoidance of any doubt, an eligible Retired NFL Football Player who submits a claim for a Monetary Award, whether successful or not, may participate in the BAP, except a Retired NFL Football Player who submits a successful claim for a Monetary Award is not eligible to later receive BAP Supplemental Benefits.

Section 5.2 Scope of Program. The BAP will provide the opportunity for each qualified Retired NFL Football Player, as set forth in Section 5.1, to receive a

maximum of one (1) baseline assessment examination, which includes: (a) a standardized neuropsychological examination in accordance with the testing protocol set forth in Exhibit 2 performed by a neuropsychologist certified by the American Board of Professional Psychology (ABPP) or the American Board of Clinical Neuropsychology (ABCN), a member board of the American Board of Professional Psychology, in the specialty of Clinical Neuropsychology, who is a Qualified BAP Provider; and (b) a basic neurological examination performed by a board-certified neurologist who is a Qualified BAP Provider. The diagnosis of Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment and Level 2 Neurocognitive Impairment made pursuant to the BAP must be agreed to by both the neuropsychologist and board-certified neurologist serving as Qualified BAP Providers. BAP baseline assessment examinations are intended to establish a physician/patient relationship between the Retired NFL Football Player and his Qualified BAP Providers. Retired NFL Football Players diagnosed during their BAP baseline assessment examinations by Qualified BAP Providers with Level 1 Neurocognitive Impairment will be eligible to receive BAP Supplemental Benefits, as set forth in Section 5.11. For the avoidance of any doubt, a Qualifying Diagnosis of Alzheimer's Disease, Parkinson's Disease, ALS or Death with CTE shall not be made through the BAP baseline assessment examination.

Section 5.3 Deadline for BAP Baseline Assessment Examination. A Retired NFL Football Player electing to receive a BAP baseline assessment examination must take it: (i) within two (2) years of the commencement of the BAP if he is age 43 or older on the Effective Date; or (ii) if he is younger than age 43 on the Effective Date, before his 45th birthday or within ten (10) years of the commencement of the BAP, whichever occurs earlier. For the avoidance of any doubt, there shall be no baseline assessment examinations after the tenth anniversary of the commencement of the BAP.

Section 5.4 Monetary Award Offset. If a Retired NFL Football Player in Subclass 1 chooses not to participate in the BAP and receives a Qualifying Diagnosis on or after the Effective Date, that Retired NFL Football Player will be subject to a Monetary Award Offset (as set forth in Section 6.7(b)(iv)) based on his non-participation in the BAP unless the Qualifying Diagnosis is of ALS or if he receives any Qualifying Diagnosis other than ALS prior to his deadline to receive a BAP baseline assessment examination as set forth in Section 5.3. This Offset does not apply to a Retired NFL Football Player who is in Subclass 2.

Section 5.5 BAP Term. The BAP will commence one hundred and twenty (120) days after the Settlement Class Supplemental Notice is posted on the Settlement Website and will end ten (10) years after it commences, except that the provision of BAP Supplemental Benefits to Retired NFL Football Players diagnosed with Level 1 Neurocognitive Impairment, as set forth in Exhibit 1, may extend beyond the term of the BAP for up to five (5) years as set forth in Section 5.11. Retired NFL Football Players who are qualified, as set forth in Section 5.1, will be entitled to one (1) baseline assessment examination within the applicable time limitations set forth in Section 5.3.

Section 5.6 BAP Administrator

(a) Appointment and Oversight

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Class Counsel will request that the Court appoint The Garretson Resolution Group, Inc. (“Garretson Group”) as BAP Administrator. Within ten (10) days after the Effective Date, Co-Lead Class Counsel will retain the BAP Administrator appointed by the Court.

(ii) Co-Lead Class Counsel’s retention agreement with the BAP Administrator will provide that the BAP Administrator will perform its responsibilities and take all steps necessary to faithfully implement and administer the BAP-related provisions of the Settlement Agreement, and will require that the BAP Administrator maintain at all times appropriate and sufficient bonding insurance in connection with its performance of its responsibilities under the Settlement Agreement.

(iii) The Court may, at its sole discretion, request reports or information from the BAP Administrator. The BAP Administrator will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs.

(iv) The Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) will oversee the BAP Administrator, and may, at his or her sole discretion, request reports or information from the BAP Administrator.

(v) Beyond the reporting requirements set forth in Section 5.6(a)(iii)-(iv), beginning one month after the Effective Date, the BAP Administrator will issue a regular monthly report to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, and Counsel for the NFL Parties during the first three years of the BAP, and thereafter on a quarterly basis, or as reasonably agreed upon by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties, regarding the status and progress of the BAP. The monthly (or quarterly) report will include, without limitation, information regarding activity in the BAP, including: (a) the number and identity of Retired NFL Football Players with pending BAP appointments, (b) the monthly and total number of Retired NFL Football Players who took part in the BAP, and the identity of each Settlement Class Member who took part in the preceding month; (c) the monthly and total monetary amounts paid to Qualified BAP Providers; (d) the monthly and total number of Retired NFL Football Players eligible for BAP Supplemental Benefits, as set forth in Section 5.11, and the identity of each such Retired NFL Football Player; (e) any Retired NFL Football Player complaints regarding specific Qualified BAP Providers; (f) expenses/administrative costs, including a summary accounting of the administrative expenses incurred by the BAP Administrator in the preceding month; and (g) any other information reasonably requested by the Special Master (or the Court after expiration of

the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(vi) Beginning on the first January after the Effective Date, the BAP Administrator will provide annual financial reports to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties, based on information from the preceding year, regarding: (a) the number of Retired NFL Football Players who took part in the BAP; (b) the monetary amount paid to Qualified BAP Providers; (c) the number of Retired NFL Football Players eligible for BAP Supplemental Benefits; (d) the expenses/administrative costs incurred by the BAP Administrator; (e) the projected expenses/administrative costs for the remainder of the BAP, including the five-year period for the provision of BAP Supplemental Benefits as set forth in Sections 5.5 and 5.11; (f) the monies remaining in the BAP Fund; and (g) any other information reasonably requested by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(b) Compensation and Expenses. Reasonable compensation of the BAP Administrator, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and reasonable out-of-pocket costs and expenses directly incurred as a result of the BAP Administrator's responsibilities will be paid out of the BAP Fund. The BAP Administrator shall submit an annual budget to the Court for review and approval. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the BAP Administrator's out-of-pocket costs and expenses, in which case the Court will determine (or may, in its discretion, refer the challenge to the Special Master to determine) the reasonableness of such costs and expenses. If the Court or Special Master, as applicable, determines that any costs and expenses are unreasonable, the BAP Administrator will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the BAP Administrator will refund that amount to the BAP Fund.

(c) Liability. The Parties, Class Counsel, Counsel for the NFL Parties, and the Special Master, and their respective Affiliates, will not be liable for any act, or failure to act, of the BAP Administrator.

(d) Replacement. The BAP Administrator may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If the BAP Administrator resigns, dies, is replaced, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed BAP Administrator for appointment by the Court.

(e) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, the Special Master and the BAP Administrator will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the BAP Administrator, including,

without limitation, its executive leadership team and all employees conducting BAP-related work, on the one hand, and Settlement Class Members (and counsel individually representing them, if any), the NFL Parties, Counsel for the NFL Parties, or the Special Master, on the other hand. Co-Lead Class Counsel, Counsel for the NFL Parties, and the BAP Administrator, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) may modify such procedures in the future, if appropriate. Notwithstanding anything herein to the contrary, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master understand that the BAP Administrator regularly provides settlement administration, lien resolution, and other related services to settling parties and their attorneys, and Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master acknowledge and agree that it shall not be a conflict of interest for the BAP Administrator to provide such services to such individuals or to receive compensation for such work.

Section 5.7 Retention and Oversight of Qualified BAP Providers and Qualified BAP Pharmacy Vendor(s)

(a) Qualified BAP Providers

(i) Within ninety (90) days after the Effective Date, the BAP Administrator will establish and maintain a network of Qualified BAP Providers to provide baseline assessment examinations to Retired NFL Football Players, and to provide medical treatment to Retired NFL Football Players who receive BAP Supplemental Benefits, as set forth in Section 5.11. The BAP Administrator's selection of all Qualified BAP Providers will be subject to written approval of Co-Lead Class Counsel and Counsel for the NFL Parties, each of which will have the unconditional right to veto the selection of twenty (20) Qualified BAP Providers, in addition to the unconditional right to veto the selection of any Qualified BAP Provider who has served or is serving as a litigation expert consultant or expert witness for a party or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint since July 1, 2011. Thereafter, the BAP Administrator may select additional Qualified BAP Providers during the term of the BAP to the extent necessary to effectuate network coverage, subject to written approval of Co-Lead Class Counsel and Counsel for the NFL Parties. Co-Lead Class Counsel and Counsel for the NFL Parties each shall accrue five (5) additional unconditional veto rights for every fifty (50) new Qualified BAP Providers selected and approved during the term of the BAP, and shall retain the unconditional right to veto the selection of any Qualified BAP Provider who has served or is serving as a litigation expert consultant or expert witness for a party or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint since July 1, 2011.

(ii) The BAP Administrator will select Qualified BAP Providers based on the following criteria: (a) education, training, licensing, credentialing, board certification, and insurance coverage; (b) ability to provide the specified baseline assessment examinations under the BAP; (c) ability to provide medical services under the BAP Supplemental Benefits; (d) ability to provide all required examinations and services in a timely manner; (e) geographic proximity to Retired NFL

Football Players; and (f) rate structure and payment terms. Under no circumstances will a Qualified BAP Provider be selected or approved who has been convicted of a crime of dishonesty, or who is serving on or after the Final Approval Date as a litigation expert consultant or expert witness for an Opt Out, or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint. If selected and approved, under no circumstances shall a Qualified BAP Provider continue to serve in that role if convicted of a crime of dishonesty and/or thereafter retained as a litigation expert consultant or expert witness for an Opt Out, or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint.

(iii) In order to be eligible for selection, each Qualified BAP Provider must provide the following information to the BAP Administrator: (a) state professional license number; (b) National Provider Identifier; (c) board-certification information, if any; (d) evidence of proper licensing and insurance coverage under applicable state laws; (e) experience, including number of years as a healthcare provider; (f) primary and additional service locations; (g) mailing and billing addresses; (h) tax identification information; (i) ability to provide the specified baseline assessment examinations; (j) capacity for new patients; (k) appointment accessibility; (l) languages spoken; (m) criminal record; (n) the percentage of his/her practice related to litigation expert/consulting engagements, including the relative percentage of such expert/consulting performed for plaintiffs, defendants and court/administrative bodies, and a general description of such engagements, since July 1, 2011; (o) list of all litigation-related engagements as a litigation expert consultant or expert witness arising out of, or relating to, head, brain and/or cognitive injury of athletes; (p) a general description of any past or present salaried, or other professional or consulting relationships with the NFL Parties or Member Clubs; and (q) such other information as the BAP Administrator may reasonably request.

(iv) The BAP Administrator will enter into a written contract with each Qualified BAP Provider (the "Provider Contract") to provide the specified baseline assessment examinations under the BAP and authorized medical services under the BAP Supplemental Benefits. The Provider Contract will include, among other things, a description of the baseline assessment examinations that will be provided under the BAP; rates, billing, and payment terms; terms relating to licensing, credentials, board certification, and other qualifications; the amount and type of insurance to be maintained by the Qualified BAP Provider; procedures for scheduling, rescheduling, and cancelling BAP appointments; document retention policies and procedures; and fraud policies. The Provider Contract will further provide: (a) that the Qualified BAP Provider will release and hold harmless the Parties, Class Counsel, Counsel for the NFL Parties, Special Master, BAP Administrator, and Claims Administrator from any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, arising from or related to the services provided by that Qualified BAP Provider as part of the BAP; (b) that the Qualified BAP Provider will not seek payment from the Parties, Class Counsel, Counsel for the NFL Parties, Special Master, BAP Administrator, or Claims Administrator for any medical service(s), examination(s), and/or test(s) or any medical

treatment or care that are not part of the specified baseline assessment examinations or authorized for payment under the terms of the BAP Supplemental Benefits, except that the Qualified BAP Provider may seek payment from a Retired NFL Football Player or, where applicable, his or her insurer for any medical service(s), examination(s), and/or test(s) or any medical treatment or care that are not part of the specified baseline assessment examinations or BAP Supplemental Benefits, where the Retired NFL Football Player, or, where applicable, his or her insurer, has agreed in writing to authorize and pay for such medical service(s), examination(s), and/or test(s) or any medical treatment or care; and (c) that the Qualified BAP Provider will retain medical records for Retired NFL Football Players in accordance with Section 5.10.

(1) The Provider Contract will be drafted by the BAP Administrator, as overseen by the Special Master, and in consultation with and subject to the approval of, Co-Lead Class Counsel and Counsel for the NFL Parties.

(2) The Provider Contract's fraud policies will contain the following warning against fraudulent conduct: "As a Qualified BAP Provider you have agreed to provide your services and make your diagnosis in good faith in accordance with best medical practices. Your diagnoses and billings will be audited on a periodic and random basis subject to the discretion of the BAP Administrator and Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof). Any finding of fraudulent diagnoses or billings by you will be subject to, without limitation, referral to appropriate regulatory and disciplinary boards and agencies and/or federal authorities, the immediate termination of this contract, and your disqualification from serving as a diagnosing physician in any aspect of the Class Action Settlement."

(v) The BAP Administrator will audit the credentialing and performance of Qualified BAP Providers on an annual (or, as needed, more frequent) basis. The criteria and process for the audit will be overseen by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) and subject to the approval of Co-Lead Class Counsel and Counsel for the NFL Parties, except Co-Lead Class Counsel or Counsel for the NFL Parties shall maintain the right to order audits of specific Qualified BAP Providers under this subparagraph, on the basis of good cause, at any time during the BAP, including the five-year period for the provision of BAP Supplemental Benefits as set forth in Sections 5.5 and 5.11. The BAP Administrator may conduct onsite visits at the locations of Qualified BAP Providers on a random or adverse selection basis to confirm their compliance with the Provider Contract described in Section 5.7(a)(iv).

(vi) All Qualified BAP Providers will bill the BAP Administrator directly for any services rendered pursuant to the terms and conditions of the BAP. The BAP Administrator will establish procedures to ensure that the BAP Fund is the primary payer for BAP baseline assessment examinations and treatments under the BAP Supplemental Benefits, subject to the coverage limits of the BAP Supplemental Benefits, consistent with the Provider Contract, which will be executed by the BAP Administrator and each participating Qualified BAP Provider. The BAP Administrator

will establish and administer a system to audit Qualified BAP Providers' procedures for billing and providing BAP baseline assessment examinations and BAP Supplemental Benefits treatments. This audit system will be designed to detect billing errors that could result in overpayment or the payment of unauthorized medical services. The BAP Administrator will bring abusive and fraudulent Qualified BAP Provider billings to the attention of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties.

(vii) The BAP Administrator may terminate the Provider Contract of any Qualified BAP Providers that are not in compliance with its terms, or for other cause.

(b) Qualified Pharmacy Vendor(s)

(i) Within ninety (90) days after the Effective Date, the BAP Administrator will contract with one or more Qualified BAP Pharmacy Vendor(s) to provide pharmaceuticals covered by the BAP Supplemental Benefits, as set forth in Section 5.11. The BAP Administrator's selection of the Qualified BAP Pharmacy Vendor(s) will be subject to written approval of the Special Master, in consultation with Co-Lead Class Counsel and Counsel for the NFL Parties.

(ii) The BAP Administrator will select Qualified BAP Pharmacy Vendor(s) based on the following criteria: (a) proper licensing for operation as a mail order pharmacy in all U.S. states and territories; (b) nationwide coverage and ease of administration; and (c) rate structure and payment terms.

(iii) In order to be eligible for selection, each Qualified BAP Pharmacy Vendor must provide the following information to the BAP Administrator: (a) federal DEA and/or state license numbers, as applicable; (b) evidence of proper licensing under applicable state laws; (c) experience, including number of years as a mail order pharmacy; (d) information about processes required to submit and fulfill mail order prescriptions; (e) average processing and delivery time from submission of a valid prescription; (f) policies related to generic substitution of name-brand pharmaceutical products; (g) mailing and billing addresses; (h) tax identification information; (i) languages spoken; and (j) such other information as the BAP Administrator may reasonably request.

(iv) The BAP Administrator will enter into a written contract with each Qualified BAP Pharmacy Vendor (the "Pharmacy Contract") to provide the pharmaceuticals covered under the BAP Supplemental Benefits. The Pharmacy Contract will include, among other things, a description of the pharmaceutical therapies that will be covered under the BAP Supplemental Benefits; rates, billing, and payment terms; terms relating to qualifications; procedures for submitting, filling, and shipping prescriptions; document retention policies and procedures; and fraud policies. The Pharmacy Contract will further provide: (a) that the Qualified BAP Pharmacy Vendor will release and hold harmless the Parties, Class Counsel, Counsel for the NFL

Parties, Special Master, BAP Administrator, and Claims Administrator from any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, arising from or related to the services provided by that Qualified BAP Pharmacy Vendor as part of the BAP; and (b) that the Qualified BAP Pharmacy Vendor will not seek payment from the Parties, Class Counsel, Counsel for the NFL Parties, Special Master, BAP Administrator, or Claims Administrator for any prescriptions that are authorized for payment under the terms of the BAP Supplemental Benefits.

(v) The BAP Administrator will audit the performance of Qualified BAP Pharmacy Vendor(s) on an annual (or, as needed, more frequent) basis. The criteria and process for the audit will be overseen by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) and subject to the approval of Co-Lead Class Counsel and Counsel for the NFL.

(vi) All Qualified BAP Pharmacy Vendors will be reimbursed by the BAP Administrator directly for any services rendered pursuant to the terms and conditions of the BAP, subject to the coverage limits of the BAP Supplemental Benefits. The BAP Administrator will establish procedures to ensure that the BAP Fund is the primary payer for covered prescriptions consistent with the Pharmacy Contract, which will be executed by the BAP Administrator and each participating Qualified BAP Provider. The BAP Administrator will establish and administer a system to audit Qualified BAP Pharmacy Vendor(s)' procedures for billing and providing approved BAP Supplemental Benefits prescriptions. This audit system will be designed to detect billing errors that could result in overpayment or the payment of unauthorized prescriptions. The BAP Administrator will bring abusive and fraudulent Qualified BAP Pharmacy Vendor billings to the attention of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties.

(vii) The BAP Administrator may terminate the Pharmacy Contract of any Qualified BAP Pharmacy Vendor that is not in compliance with its terms, or for other cause.

Section 5.8 Scheduling and Providing Baseline Assessment Examinations. The Parties will establish, subject to Court approval, processes and procedures governing the scheduling and provision of BAP examinations.

Section 5.9 Other Communications with Retired NFL Football Players

(a) The BAP Administrator will send an Explanation of Benefits ("EOB") statement to each Retired NFL Football Player following a BAP appointment. The statement will describe the services and medical examinations that were performed during the appointment.

(b) Beginning one (1) year after the Effective Date of the Settlement Agreement, the BAP Administrator will send Retired NFL Football Players who have not received baseline assessments and remain eligible to do so, an annual statement describing the BAP and requesting that they update any contact information that has changed in the preceding year.

(c) If a Retired NFL Football Player is represented by counsel and has provided such notice to the BAP Administrator, the BAP Administrator will copy his counsel of record on any written communications with the Retired NFL Football Player.

Section 5.10 Use and Retention of Medical Records

(a) All Retired NFL Football Players who participate in the BAP will be encouraged to provide their confidential medical records for use in medical research into cognitive impairment and safety and injury prevention with respect to football players. The provision of such medical records shall be subject to the reasonable informed consent of the Retired NFL Football Players, and in compliance with applicable law, including a HIPAA-compliant authorization form. Medical records and information used in medical research will be kept confidential.

(b) The BAP Administrator will retain the medical records of Retired NFL Football Players and other program-defined forms that must be completed by the Qualified BAP Providers.

(c) Qualified BAP Providers who provide BAP baseline assessment examinations will be required to retain all medical records from such visits in compliance with applicable state and federal laws; provided, however, that each Qualified BAP Provider will be required to retain all medical records in the format(s) prescribed by applicable state and federal laws and, notwithstanding any shorter time period permitted under applicable laws, will be required to retain such medical records for not less than ten (10) years after the conclusion of the BAP term.

(d) All Retired NFL Football Player medical records will be treated as confidential, as set forth in Section 17.2.

Section 5.11 BAP Supplemental Benefits. Each Retired NFL Football Player diagnosed by Qualified BAP Providers with a Level 1 Neurocognitive Impairment, as defined in Exhibit 1, shall be eligible for BAP Supplemental Benefits related to the Retired NFL Football Player's impairment in the form of medical treatment, counseling and/or examination by Qualified BAP Providers, including, if medically needed and prescribed by a Qualified BAP Provider, pharmaceuticals by Qualified BAP Pharmacy Vendor(s). BAP Supplemental Benefits shall comprise medical treatments and/or examinations generally accepted by the medical community. The BAP Supplemental Benefits must be used within the term of the BAP or within five (5) years of diagnosis of Level 1 Neurocognitive Impairment by Qualified BAP Providers, even if the five (5) year period extends beyond the term of the BAP, whichever is later. The

BAP Administrator, as overseen by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), and in consultation with, and subject to the approval of, Co-Lead Class Counsel and Counsel for the NFL Parties, will establish the procedures governing BAP Supplemental Benefits.

Section 5.12 Diagnosing Physician Certifications. Qualified BAP Providers who diagnose a Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment, as set forth in Exhibit 1, must support that diagnosis with a Diagnosing Physician Certification and supporting medical records. The Qualified BAP Provider must provide the Diagnosing Physician Certification and copies of the supporting medical records to the Retired NFL Football Player, his counsel (if any), and the BAP Administrator.

Section 5.13 Conflicting Opinions of Qualified BAP Providers. If there is a lack of agreement, as required by Section 5.2 and Exhibit 1, between the two Qualified BAP Providers regarding whether a Retired NFL Football Player has Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, or none, the BAP Administrator may in its discretion: (a) request that the Qualified BAP Providers confer with each other in an attempt to resolve the conflict; (b) request that a second BAP baseline assessment examination be conducted by different Qualified BAP Providers; or (c) refer the results of the BAP baseline assessment examination and all relevant medical records to a member of the Appeals Advisory Panel for review and decision. The decision of the member of the Appeals Advisory Panel will determine whether the Retired NFL Football Player has Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, or none. If the member of the Appeals Advisory Panel determines that additional review, analysis and/or testing needs to be conducted prior to a decision, such review, analysis and/or testing will be completed by Qualified BAP Providers as selected by the BAP Administrator. The decision of the Appeals Advisory Panel member as to whether the Retired NFL Football Player has Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, or none, will be final and binding, except a claim for a Monetary Award or Derivative Claimant Award relying on such diagnosis may still be appealed, as set forth in Section 9.5. The member of the Appeals Advisory Panel must support the decision with a Diagnosing Physician Certification.

Section 5.14 Funding.

(a) All aspects of the BAP, including, without limitation, its costs and expenses, payment of Qualified BAP Providers, compensation of the BAP Administrator, and BAP Supplemental Benefits, will be paid from the BAP Fund. Any funds remaining in the BAP Fund at the conclusion of the five-year period for the provision of BAP Supplemental Benefits, as set forth in Sections 5.5 and 5.11, shall be transferred to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

(b) In order to ensure sufficient funds to pay for a baseline assessment examination for each eligible Retired NFL Football Player, as set forth in Section 5.2 and subject to Sections 5.14(a), 23.1(b) and 23.3(d) of this Agreement, the maximum per player BAP Supplemental Benefit payable under this Section, taking into account such factors as the number of Retired NFL Football Players using the BAP and diagnosed with Level 1 Neurocognitive Impairment, shall be determined on the one-year anniversary of the commencement of the BAP by Co-Lead Class Counsel and Counsel for the NFL Parties, in consultation with the BAP Administrator, and with the approval of the Court. The maximum per player benefit will be set at a sufficient level to ensure that there will be sufficient funds, without exceeding the Seventy-Five Million United States Dollars (U.S. \$75,000,000) cap on the BAP Fund, to pay for every eligible Retired NFL Football Player to receive one baseline assessment examination. At the conclusion of the term of the BAP, and at such other times as the Court may direct or as may be requested by Co-Lead Class Counsel or Counsel for the NFL Parties, Co-Lead Class Counsel and Counsel for the NFL Parties will review and adjust, if necessary, this maximum benefit, in consultation with the BAP Administrator and with the approval of the Court, to ensure that there are sufficient funds to pay for all baseline assessment examinations without exceeding the Seventy-Five Million United States Dollar (U.S. \$75,000,000) cap on the BAP Fund.

ARTICLE VI

Monetary Awards for Qualifying Diagnoses

Section 6.1 Eligible Retired NFL Football Players and Representative Claimants will be entitled to Monetary Awards as set forth in this Article.

Section 6.2 Eligibility

(a) A Settlement Class Member who is a Retired NFL Football Player or Representative Claimant is eligible for a Monetary Award if, and only if: (i) the Settlement Class Member timely registered to participate in the Class Action Settlement, as set forth in Section 4.2; (ii) the subject Retired NFL Football Player or deceased Retired NFL Football Player was diagnosed with a Qualifying Diagnosis; and (iii) the Settlement Class Member timely submits a Claim Package, subject to the terms and conditions set forth in ARTICLE VIII.

(b) A Representative Claimant of a deceased Retired NFL Football Player will be eligible for a Monetary Award only if the deceased Retired NFL Football Player died on or after January 1, 2006, or if the Court determines that a wrongful death or survival claim filed by the Representative Claimant would not be barred by the statute of limitations under applicable state law as of: (i) the date the Representative Claimant filed litigation against the NFL (and, where applicable, NFL Properties) relating to the subject matter of these lawsuits, if such a wrongful death or survival claim was filed prior to the Settlement Date; or (ii) the Settlement Date, where no such suit has previously been filed.

Section 6.3 Qualifying Diagnoses

(a) The following, as defined in Exhibit 1, are Qualifying Diagnoses eligible for a Monetary Award: (a) Level 1.5 Neurocognitive Impairment; (b) Level 2 Neurocognitive Impairment; (c) Alzheimer's Disease; (d) Parkinson's Disease; (e) Death with CTE; and (f) ALS. All Qualifying Diagnoses must be made by properly credentialed physicians as set forth below for the particular Qualifying Diagnosis, consistent with Exhibit 1 (Injury Definitions).

(b) Following the Effective Date, a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, Alzheimer's Disease, Parkinson's Disease, or ALS shall be made only by Qualified MAF Physicians, except that a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment may also be made by Qualified BAP Providers as set forth in Section 5.2 and consistent with the terms of Exhibit 1 (Injury Definitions).

(i) Any licensed neuropsychologist who assists a Qualified MAF Physician in making a Qualifying Diagnosis must be certified by the American Board of Professional Psychology (ABPP) or the American Board of Clinical Neuropsychology (ABCN), a member board of the American Board of Professional Psychology, in the specialty of Clinical Neuropsychology.

(c) From the date of the Preliminary Approval and Class Certification Order through the Effective Date, a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, Alzheimer's Disease, Parkinson's Disease, or ALS shall be made only by board-certified neurologists, board-certified neurosurgeons, or other board-certified neuro-specialist physicians, except as set forth in Section 6.3(e).

(d) Prior to the date of the Preliminary Approval and Class Certification Order, a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, Alzheimer's Disease, Parkinson's Disease, or ALS shall be made only by board-certified neurologists, board-certified neurosurgeons, or other board-certified neuro-specialist physicians, or otherwise qualified neurologists, neurosurgeons, or other neuro-specialist physicians, except as set forth in Section 6.3(e).

(e) For a Retired NFL Football Player deceased prior to the Effective Date, a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, Alzheimer's Disease, Parkinson's Disease, or ALS, which was rendered while the Retired NFL Football Player was living by a physician not otherwise identified in Sections 6.3 (b)-(d) but who has sufficient qualifications (i) in the field of neurology to make a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, Alzheimer's Disease, Parkinson's Disease, or ALS, or (ii) in the field of neurocognitive disorders to make a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment, is permitted.

(f) A Qualifying Diagnosis of Death with CTE shall be made only for Retired NFL Football Players who died prior to the Final Approval Date, through a post-mortem diagnosis made by a board-certified neuropathologist prior to the Final Approval Date, provided that a Retired NFL Football Player who died between July 7, 2014 and the Final Approval Date shall have until 270 days from his date of death to obtain such a post-mortem diagnosis.

Section 6.4 Qualifying Diagnosis Review by Appeals Advisory Panel.

(a) A member of the Appeals Advisory Panel must review, as set forth in Section 6.4(b), Qualifying Diagnoses made prior to the Effective Date by:

(i) A board-certified neurologist, board-certified neurosurgeon, or other board-certified neuro-specialist physician, who is not a Qualified MAF Physician, between July 1, 2011 and the Effective Date;

(ii) A neurologist, neurosurgeon, or other neuro-specialist physician, who is not board-certified but is otherwise qualified; and

(iii) A physician who is not a Qualified MAF Physician and who is not otherwise identified in Section 6.4(a)(i)-(ii) but who has sufficient qualifications (i) in the field of neurology to make a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, Alzheimer's Disease, Parkinson's Disease, or ALS, or (ii) in the field of neurocognitive disorders to make a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment.

(b) If a review of a Qualifying Diagnosis by a member of the Appeals Advisory Panel is required by Section 6.4(a), the contents of the Claim Package relevant to the Qualifying Diagnosis, including the Claim Form, the Diagnosing Physician Certification, medical records supporting and reflecting the Qualifying Diagnosis, and any other related materials concerning the Qualifying Diagnosis, shall be submitted to a member of the Appeals Advisory Panel for review. The Appeals Advisory Panel member will determine whether the Retired NFL Football Player or deceased Retired NFL Football Player has the Qualifying Diagnosis reported in the Diagnosing Physician Certification, or, where there is no Diagnosing Physician Certification as set forth in Section 8.2(a), reported in the Claim Package submitted by the Representative Claimant. The Appeals Advisory Panel member shall review the Qualifying Diagnosis based on principles generally consistent with the diagnostic criteria set forth in Exhibit 1 (Injury Definitions), including consideration of, without limitation, the qualifications of the diagnosing physician, the supporting medical records and the year and state of medicine in which the Qualifying Diagnosis was made. The Appeals Advisory Panel member also shall confirm that the Qualifying Diagnosis was made by an appropriate physician as set forth in Section 6.3. For the avoidance of any doubt, the review of whether a Qualifying Diagnosis is based on principles generally consistent with the diagnostic criteria set forth in Exhibit 1 (Injury Definitions) does not require identical

diagnostic criteria, including without limitation, the same testing protocols or documentation requirements.

(i) The review by a member of the Appeals Advisory Panel under this subsection, absent extraordinary circumstances impacting the schedule of such member, shall be completed within forty-five (45) days of the date on which he or she receives a Settlement Class Member's file, except such time limit may be altered to the extent the volume of files warrants, either by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), or by application by Co-Lead Class Counsel or Counsel for the NFL Parties to the Court. The Qualifying Diagnoses shall generally be reviewed in the order in which they are received.

Section 6.5 Qualified MAF Physicians

(a) Within ninety (90) days after the Effective Date, the Claims Administrator will establish and maintain a list of Qualified MAF Physicians eligible to provide Qualifying Diagnoses. Each Qualified MAF Physician shall be approved by Co-Lead Class Counsel and Counsel for the NFL Parties, which approval shall not be unreasonably withheld. To the extent a Retired NFL Football Player is examined by a Qualified MAF Physician, such visit and examination shall be at the Retired NFL Football Player's own expense.

(b) The Claims Administrator will select Qualified MAF Physicians based on the following criteria: (a) education, training, licensing, credentialing, board certification, and insurance coverage; (b) ability to provide the specified examinations necessary to make Qualifying Diagnoses; (c) ability to provide all required examinations and services in a timely manner; (d) insurance accessibility; and (e) geographic proximity to Retired NFL Football Players. Under no circumstances will a Qualified MAF Physician be selected or approved who has been convicted of a crime of dishonesty, or who is serving on or after the Final Approval Date as a litigation expert consultant or expert witness for an Opt Out, or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint. If selected and approved, under no circumstances shall a Qualified MAF Physician continue to serve in that role if convicted of a crime of dishonesty and/or thereafter retained as a litigation expert consultant or expert witness for an Opt Out, or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint.

(c) In order to be eligible for selection, each Qualified MAF Physician must provide the following information to the Claims Administrator: (a) state professional license number; (b) National Provider Identifier; (c) board-certification information; (d) evidence of proper licensing and insurance coverage under applicable state laws; (e) experience, including number of years as a healthcare provider; (f) primary and additional service locations; (g) mailing and billing addresses; (h) tax identification information; (i) ability to provide all required examinations and services in a timely manner; (j) capacity for new patients; (k) appointment accessibility; (l) languages spoken;

(m) criminal record; (n) the percentage of his/her practice related to litigation expert/consulting engagements, including the relative percentage of such expert/consulting performed for plaintiffs, defendants, and court/administrative bodies, and a general description of such engagements, since July 1, 2011; (o) list of all litigation-related engagements as a litigation expert consultant or expert witness arising out of, or relating to, head, brain and/or cognitive injury of athletes; (p) a general description of any past or present salaried, or other professional or consulting relationships with the NFL Parties or Member Clubs; and (q) such other information as the Claims Administrator may reasonably request.

Section 6.6 Modification of Qualifying Diagnoses

(a) Subject to the constraints of Section 6.6(b), following the Effective Date, on a periodic basis not to exceed once every ten (10) years, Co-Lead Class Counsel and Counsel for the NFL Parties agree to discuss in good faith possible prospective modifications to the definitions of Qualifying Diagnoses and/or the protocols for making Qualifying Diagnoses, in light of generally accepted advances in medical science. No such modifications can be made absent written agreement between Co-Lead Class Counsel and Counsel for the NFL Parties and approval by the Court, and neither Co-Lead Class Counsel nor Counsel for the NFL Parties shall seek modification to the definitions of Qualifying Diagnoses and/or the protocols for making Qualifying Diagnoses other than with the written agreement of the other regarding such modifications.

(b) Monetary Awards, consistent with the terms of this Settlement Agreement, shall compensate Settlement Class Members only in circumstances where a Retired NFL Football Player manifests actual cognitive impairment and/or actual neuromuscular impairment, or a deceased Retired NFL Football Player manifested actual cognitive impairment and/or actual neuromuscular impairment while living. For the avoidance of any doubt, the identification of a condition—for example, through a blood test, genetic test, imaging technique, or otherwise—that has not yet resulted in actual cognitive impairment and/or actual neuromuscular impairment experienced by the Retired NFL Football Player does not qualify as a Qualifying Diagnosis. As such, Co-Lead Class Counsel and Counsel for the NFL Parties have defined the Qualifying Diagnoses to require an actual manifestation of cognitive impairment and/or an actual manifestation of neuromuscular impairment. Consistent with Section 6.6(a), Co-Lead Class Counsel and Counsel for the NFL Parties will address possible advances in science to effectuate this mutual intent. For the avoidance of doubt, this subsection does not apply to the Qualifying Diagnosis of Death with CTE. This subsection also does not alter the Qualifying Diagnoses definitions, as set forth in Exhibit 1.

(c) In no event will modifications be made to the Monetary Award levels in the Monetary Award Grid, except for inflation adjustment(s) as set forth in Section 6.9.

Section 6.7 Determination of Monetary Awards

(a) Settlement Class Members who the Claims Administrator determines are entitled to Monetary Awards will be compensated in accordance with the terms of the Monetary Award Grid and all applicable Offsets, as set forth in Exhibit 3 and below, except such compensation will be reduced by one percent (1%) to the extent that any Derivative Claimants submit for, and are entitled to, a Derivative Claimant Award based upon their relationships with the Retired NFL Football Player, as set forth in ARTICLE VII.

(b) Offsets. All Monetary Awards will be subject to downward adjustments, including based on a Settlement Class Member's age at the time of the Qualifying Diagnosis (as reflected in the Monetary Award Grid, as set forth in Exhibit 3), and as follows:

(i) Number of Eligible Seasons:

- (1) 4.5 Eligible Seasons: - 10%
- (2) 4 Eligible Seasons: - 20%
- (3) 3.5 Eligible Seasons: - 30%
- (4) 3 Eligible Seasons: - 40%
- (5) 2.5 Eligible Seasons: - 50%
- (6) 2 Eligible Seasons: - 60%
- (7) 1.5 Eligible Seasons: - 70%
- (8) 1 Eligible Season: - 80%
- (9) 0.5 Eligible Seasons: - 90%
- (10) 0 Eligible Seasons: - 97.5%

(ii) Medically diagnosed Stroke occurring prior to a Qualifying Diagnosis: - 75%

(iii) Medically diagnosed Traumatic Brain Injury occurring prior to a Qualifying Diagnosis: - 75%

(iv) Non-participation in the BAP by a Retired NFL Football Player in Subclass 1, except where the Qualifying Diagnosis is of ALS or if he receives any Qualifying Diagnosis prior to his deadline to receive a BAP baseline assessment examination as set forth in Section 5.3: - 10%

(c) For purposes of calculating the total number of Eligible Seasons earned by a Retired NFL Football Player or deceased Retired NFL Football Player under this Settlement Agreement, each earned Eligible Season and each earned half of an Eligible Season will be summed together to reach a total number of Eligible Seasons (e.g., 3.5 Eligible Seasons), except a Retired NFL Football Player may not receive credit for more than one (1) Eligible Season per year (with each year defined to include any spring World League of American Football, NFL Europe League or NFL Europa League season, and the following fall NFL season). By way of example only: (a) a Retired NFL Football Player who was on a NFL Europe League team's active roster on the date of three (3) or more regular season or postseason games during the 2002 spring NFL Europe League season and who was on a Member Club's Active List on the date of three (3) or more regular season or postseason games during the 2002-2003 fall NFL season would receive credit for one (1) Eligible Season for the year; and (b) a Retired NFL Football Player who was on a NFL Europe League team's active roster on the date of three (3) or more regular season or postseason games during the 2002 spring NFL Europe League season and who was on a Member Club's practice squad for at least eight (8) regular season or postseason games during the 2002-2003 fall NFL season would receive credit for one (1) Eligible Season for the year.

(d) If the Retired NFL Football Player receives a Qualifying Diagnosis prior to a medically diagnosed Stroke or a medically diagnosed Traumatic Brain Injury, then the 75% Offset for medically diagnosed Stroke or medically diagnosed Traumatic Brain Injury will not apply. If the Retired NFL Football Player receives a Qualifying Diagnosis subsequent to a medically diagnosed Stroke or a medically diagnosed Traumatic Brain Injury, and if the Settlement Class Member demonstrates, by clear and convincing evidence, that the Qualifying Diagnosis was not causally related to the Stroke or the Traumatic Brain Injury, then the 75% Offset will not apply.

(e) Multiple Offsets will be applied individually and in a serial manner to any Monetary Award. For example, if the Monetary Award before the application of Offsets is \$1,000,000, and two 10% Offsets apply, there will be a 19% aggregate downward adjustment of the award (*i.e.*, application of the first Offset will reduce the award by 10%, or \$100,000, to \$900,000, and application of the second Offset will reduce the award by an additional 10%, or \$90,000, to \$810,000).

Section 6.8 Supplemental Monetary Awards. If, during the term of the Monetary Award Fund, a Retired NFL Football Player who has received a Monetary Award based on a certain Qualifying Diagnosis subsequently is diagnosed with a different Qualifying Diagnosis, the Retired NFL Football Player (or his Representative Claimant, if applicable) may be entitled to a Supplemental Monetary Award. If the Monetary Award level in the Monetary Award Grid ("Grid Level") for the subsequent Qualifying Diagnosis is greater than the Grid Level for the earlier Qualifying Diagnosis, the Retired NFL Football Player (or his Representative Claimant, if applicable) will be entitled to a payment that is equal to the Grid Level for the subsequent Qualifying Diagnosis, after application of all applicable Offsets, minus the Grid Level for the earlier Qualifying Diagnosis, after application of all applicable Offsets, but prior to any deductions for the satisfaction of Liens. In other words, any amounts deducted from the

earlier Monetary Award to satisfy Liens will not be considered in the calculation of the Supplemental Monetary Award, which may also require an amount deducted to satisfy any subsequent Liens. (By way of example only, a Retired NFL Football Player who receives a Monetary Award for Level 1.5 Neurocognitive Impairment that is \$1,000,000 after application of all Offsets, which is then reduced by \$20,000 to \$980,000 to satisfy a Lien, and who later receives a Qualifying Diagnosis for Level 2 Neurocognitive Impairment that would pay \$1,200,000 after application of all Offsets, where there are no additional Liens, shall be entitled to a Supplemental Monetary Award of \$200,000.)

Section 6.9 Inflation Adjustment. Monetary Award amounts set forth in Exhibit 3 will be subject to an annual inflation adjustment, beginning one year after the Effective Date, not to exceed two and a half percent (2.5%), the precise amount subject to the sound judgment of the Special Master (or the Court after expiration of the term of the Special Master) based on consideration of the Consumer Price Index for Urban Consumers (CPI-U).

Section 6.10 Monetary Award Fund Term. The Monetary Award Fund will commence on the Effective Date and will end sixty-five (65) years after the Effective Date.

ARTICLE VII

Derivative Claimant Awards

Section 7.1 All Settlement Class Members who are Derivative Claimants seeking Derivative Claimant Awards must do so through the submission of Derivative Claim Packages containing all required proof, as set forth in Section 8.2(b).

Section 7.2 Eligibility. A Settlement Class Member who is a Derivative Claimant is entitled to a Derivative Claimant Award if, and only if: (a) the Derivative Claimant timely registered to participate in the Class Action Settlement, as set forth in Section 4.2; (b) the Retired NFL Football Player through whom the relationship is the basis of the claim (or the Representative Claimant of a deceased or legally incapacitated or incompetent Retired NFL Football Player through whom the relationship is the basis of the claim) has received a Monetary Award; (c) the Settlement Class Member timely submits a Derivative Claim Package, subject to the terms and conditions set forth in ARTICLE VIII; and (d) the Claims Administrator determines, based on a review of the records provided in the Derivative Claim Package and applicable state law, that the Derivative Claimant has a relationship with the subject Retired NFL Football Player that properly and legally provides the right under applicable state law to sue independently and derivatively.

Section 7.3 Determination of Derivative Claimant Awards. Settlement Class Members who the Claims Administrator determines are entitled to Derivative Claimant Awards will be compensated from the Monetary Award of the Retired NFL Football Player through whom the relationship is the basis of the claim (or his Representative Claimant), and from any Supplemental Monetary Award, in the amount of one percent (1%) of that Monetary Award and any Supplemental Monetary Award. If

there are multiple Derivative Claimants asserting valid claims based on the same subject Retired NFL Football Player, the Claims Administrator will divide and distribute the Derivative Claimant Award among those Derivative Claimants pursuant to the laws of the domicile of the Retired NFL Football Player (or his Representative Claimant, if any).

ARTICLE VIII

Submission and Review of Claim Packages and Derivative Claim Packages

Section 8.1 All Settlement Class Members applying for Monetary Awards or Derivative Claimant Awards must submit Claim Packages or Derivative Claim Packages to the Claims Administrator.

Section 8.2 Content

(a) The content of Claim Packages will be agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and will include, without limitation: (i) a Claim Form with the Personal Signature of the Retired NFL Football Player (or Representative Claimant) either on the Claim Form or on an acknowledgement form verifying the contents of the Claim Form; (ii) a Diagnosing Physician Certification; (iii) medical records reflecting the Qualifying Diagnosis; (iv) a HIPAA-compliant authorization form; and (v) records in the possession, custody or control of the Settlement Class Member demonstrating employment and participation in NFL Football.

(i) Representative Claimants of Retired NFL Football Players who died prior to the Effective Date do not need to include a Diagnosing Physician Certification in the Claim Package if the physician who provided the Qualifying Diagnosis, as set forth in Exhibit 1, also died prior to the Effective Date or was deemed by a court of competent jurisdiction legally incapacitated or incompetent prior to the Effective Date. Instead, the Representative Claimant must provide evidence of that physician's death, incapacity or incompetence and of the qualifications of the diagnosing physician. For the avoidance of any doubt, all other content of Claim Packages must be submitted, including medical records reflecting the Qualifying Diagnosis.

(ii) In cases where a deceased Retired NFL Football Player received a Qualifying Diagnosis but the medical records reflecting the Qualifying Diagnosis are unavailable because of a force majeure type event (*e.g.*, flood, hurricane, fire), the Claims Administrator, upon petition by the Representative Claimant, may determine the Claim Package to be valid without the medical records if the Representative Claimant makes a showing of a reasonable effort to obtain the medical records from any available source and presents a certified death certificate referencing the Qualifying Diagnosis made while the Retired NFL Football Player was living. For the avoidance of any doubt, the Claims Administrator has the sole discretion to determine the sufficiency of this showing, subject to the appeal rights set forth in Section 9.5. If the unavailability of medical records also causes the diagnosing physician to be unable to provide a Diagnosing Physician Certification, the Claims Administrator, upon petition by

the Representative Claimant, and in addition to the presentation of a certified death certificate referencing the Qualifying Diagnosis made while the Retired NFL Football Player was living, may instead allow an accompanying sworn affidavit from the diagnosing physician attesting to the reasons why the diagnosing physician is unable to provide a Diagnosing Physician Certification without the medical records. The Claims Administrator has the sole discretion to determine the sufficiency of this showing, subject to the appeal rights set forth in Section 9.5.

(iii) In cases where a Retired NFL Football Player has received a Qualifying Diagnosis and the diagnosing physician who provided the Qualifying Diagnosis, as set forth in Exhibit 1, has died or has been deemed by a court of competent jurisdiction legally incapacitated or incompetent prior to the Effective Date, or otherwise prior to completing a Diagnosing Physician Certification, the Retired NFL Football Player (or his Representative Claimant, if applicable) may obtain a Diagnosing Physician Certification from a separate qualified physician for the Qualifying Diagnosis as specified in Exhibit 1 based on an independent examination by the qualified physician and a review of the Retired NFL Football Player's medical records that formed the basis of the Qualifying Diagnosis by the deceased or legally incapacitated or incompetent physician. If the same Qualifying Diagnosis is found by both doctors, the date of Qualifying Diagnosis used to calculate Monetary Awards shall be the date of the earlier Qualifying Diagnosis.

(b) The content of Derivative Claim Packages will be agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and will include, without limitation: (i) a Derivative Claim Form with the Personal Signature of the Derivative Claimant either on the Derivative Claim Form or on an acknowledgement form verifying the contents of the Derivative Claim Form; and (ii) records sufficient to verify the relationship with the subject Retired NFL Football Player or deceased Retired NFL Football Player that properly and legally provides the Derivative Claimant the right under applicable state law to sue independently and derivatively.

(c) All statements made in Claim Forms, Derivative Claim Forms, any acknowledgement forms, and Diagnosing Physician Certifications will be sworn statements under penalty of perjury.

(d) Each Settlement Class Member has the obligation to submit to the Claims Administrator all of the documents required in Section 8.2 to receive a Monetary Award or Derivative Claimant Award.

Section 8.3 Submission

(a) Settlement Class Members must submit Claim Packages and Derivative Claim Packages to the Claims Administrator in accordance with Section 30.15.

(i) Claim Packages must be submitted to the Claims Administrator no later than two (2) years after the date of the Qualifying Diagnosis or

within two (2) years after the Settlement Class Supplemental Notice is posted on the Settlement Website, whichever is later. Failure to comply with this two (2) year time limitation will preclude a Monetary Award for that Qualifying Diagnosis, unless the Settlement Class Member can show substantial hardship that extends beyond the Retired NFL Football Player's Qualifying Diagnosis and that precluded the Settlement Class Member from complying with the two (2) year deadline, and submits the Claim Package within four (4) years after the date of the Qualifying Diagnosis or after the Settlement Class Supplemental Notice is posted on the Settlement Website, whichever is later.

(ii) Derivative Claim Packages must be submitted to the Claims Administrator no later than thirty (30) days after the Retired NFL Football Player through whom the relationship is the basis of the claim (or the Representative Claimant of a deceased or legally incapacitated or incompetent Retired NFL Football Player through whom the relationship is the basis of the claim) receives a Notice of Monetary Award Claim Determination that provides a determination that the Retired NFL Football Player (or his Representative Claimant) is entitled to a Monetary Award. Failure to comply with this time limitation will preclude a Derivative Claimant Award based on that Monetary Award.

(b) Each Settlement Class Member will promptly notify the Claims Administrator of any changes or updates to the information the Settlement Class Member has provided in the Claim Package or Derivative Claim Package, including any change in mailing address.

(c) All information submitted by Settlement Class Members to the Claims Administrator will be recorded in a computerized database that will be maintained and secured in accordance with all applicable federal, state and local laws, regulations and guidelines, including, without limitation, HIPAA. The Claims Administrator must ensure that information is recorded and used properly, that an orderly system of data management and maintenance is adopted, and that the information is retained under responsible custody. The Claims Administrator will keep the database in a form that grants access for claims administration use, but otherwise restricts access rights, including to employees of the Claims Administrator who are not working on claims administration for the Class Action Settlement.

(i) The Claims Administrator and Lien Resolution Administrator, and their respective agents, representatives, and professionals who are administering the Class Action Settlement, will have access to all information submitted by Settlement Class Members to the Claims Administrator and/or Lien Resolution Administrator necessary to perform their responsibilities under the Settlement Agreement.

(ii) All information submitted by Settlement Class Members to the Claims Administrator will be treated as confidential, as set forth in Section 17.2.

Section 8.4 Preliminary Review

(a) Within forty-five (45) days of the date on which the Claims Administrator receives a Claim Package or Derivative Claim Package from a Settlement Class Member, the Claims Administrator will determine the sufficiency and completeness of the required contents, as set forth in Section 8.2. To the extent the volume of claims warrants, this deadline may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof).

(b) The Claims Administrator will reject a claim submitted by a Settlement Class Member, subject to the cure provisions of Section 8.5, if the Claims Administrator has not received all required content.

Section 8.5 Deficiencies and Cure. For rejected Claim Packages or Derivative Claim Packages, the Claims Administrator will send a Notice of Deficiency to the Settlement Class Member, which Notice will contain a brief explanation of the Deficiency(ies) giving rise to rejection of the Claim Package or Derivative Claim Package, and will, where necessary, request additional information and/or documentation. The Claims Administrator will make available to the Settlement Class Member through a secure online web interface any document(s) with a Deficiency needing correction or, upon request from the Settlement Class Member, will mail the Settlement Class Member a copy of such document(s). The Notice of Deficiency will be sent no later than forty-five (45) days from the date of receipt of the Claim Package or Derivative Claim Package by the Claims Administrator. To the extent the volume of claims warrants, this deadline may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof). The Notice of Deficiency will contain a recommendation for how, if possible, the Settlement Class Member can cure the Deficiency, and will provide a reasonable deadline not less than 120 days (from the date the Notice of Deficiency is sent to the Settlement Class Member) for the Settlement Class Member to submit Deficiency cure materials. Within that time period, the Settlement Class Member will have the opportunity to cure all Deficiencies and provide any requested additional information or documentation, except that the failure to submit timely a Claim Package or Derivative Claim Package in accordance with the terms of this Settlement Agreement cannot be cured other than upon a showing of substantial hardship as set forth in Section 8.3(a)(i). Any Claim Package or Derivative Claim Package that continues to suffer from a Deficiency identified on the Notice of Deficiency following the submission of documentation intended to cure the Deficiency will be denied by the Claims Administrator.

Section 8.6 Verification and Investigation

(a) Each Settlement Class Member claiming a Monetary Award or Derivative Claimant Award will authorize the Claims Administrator and/or Lien Resolution Administrator, as applicable, consistent with HIPAA and other

applicable privacy laws, to verify facts and details of any aspect of the Claim Package or Derivative Claim Package and/or the existence and amounts, if any, of any Liens. The Claims Administrator or Lien Resolution Administrator, at its sole discretion, may request additional documentation, which each Settlement Class Member agrees to provide in order to claim a Monetary Award or Derivative Claimant Award.

(b) The Claims Administrator will have the discretion to undertake or cause to be undertaken further verification and investigation, including into the nature and sufficiency of any Claim Package or Derivative Claim Package documentation, including, without limitation, as set forth in Section 10.3.

ARTICLE IX

Notice of Claim Determinations, Payments, and Appeals

Section 9.1 Monetary Award Determination. Based upon its review of the Claim Package, and the results of any investigations of the Settlement Class Member's claim, the Claims Administrator will determine whether a Settlement Class Member qualifies for a Monetary Award and the amount of any such Award. In order to decide whether a Settlement Class Member is entitled to a Monetary Award, and at what level, the Claims Administrator will determine whether the Retired NFL Football Player or deceased Retired NFL Football Player has a Qualifying Diagnosis according to the Diagnosing Physician Certification, including consideration of, without limitation, the qualifications of the diagnosing physician, or in the case of a deceased Retired NFL Football Player diagnosed by a deceased physician, as set forth in Section 8.2(a)(i), according to the supporting medical records. If the Claims Administrator determines that there is a Qualifying Diagnosis, it will determine the level of Monetary Award based on the Monetary Award Grid (attached as Exhibit 3) and a review of the Diagnosing Physician Certification for the age at the time of the Qualifying Diagnosis, and will review the Claim Package, including the Claim Form and medical records reflecting the Qualifying Diagnosis, for information relating to all other Offsets, and must apply all applicable Offsets to the Monetary Award. For the avoidance of any doubt, the Claims Administrator has no discretion to make a Monetary Award determination other than as set forth above.

(a) Evidence of NFL Employment and Participation. To the extent that the Claims Administrator determines that the Settlement Class Member has provided in the Claim Package insufficient evidence of the Retired NFL Football Player's NFL employment and participation to substantiate the claimed Eligible Seasons, the Claims Administrator will request that the NFL Parties and Member Clubs provide any employment or participation records of the Retired NFL Football Player in their reasonable possession, custody or control, which the NFL Parties and Member Clubs will provide in good faith. The Claims Administrator will consider all of the evidence provided to it by the Retired NFL Football Player and the NFL Parties and Member Clubs in determining the appropriate number of Eligible Seasons to apply to the Retired NFL Football Player's claim. The Claims Administrator shall credit only the Eligible Seasons substantiated by the overall evidence. To the extent there is no objective evidence regarding an Eligible Season claimed by the Retired NFL Football Player

beyond his sworn statement, the Claims Administrator will take into account the reasons offered by the Retired NFL Football Player for the lack of such objective evidence in arriving at its final decision.

(i) The assertion of NFL employment and participation in more than one (1) Eligible Season, however, must be substantiated by the Retired NFL Football Player with objective evidence beyond his sworn statement, the sufficiency of which shall be in the Claims Administrator's discretion. In the event there is no objective evidence of NFL employment and participation in more than one (1) Eligible Season, the Claims Administrator may credit the Retired NFL Football Player with one (1) or fewer Eligible Seasons consistent with Section 9.1(a).

(b) Timing of Monetary Award Determination. The Claims Administrator will make such determination and will send a corresponding Notice of Monetary Award Claim Determination to the Settlement Class Member and the NFL Parties no later than sixty (60) days from the later of: (i) the date when a completed Claim Package that is free from all Deficiencies is received by the Claims Administrator; (ii) the date, if any, when all Deficiencies with a Settlement Class Member's Claim Package have been deemed cured by the Claims Administrator; (iii) the date, if any, on which the additional information or documentation identified in the Notice of Deficiency, if applicable, has been timely provided to the Claims Administrator; (iv) the date of a decision by a member of the Appeals Advisory Panel under Section 8.6(b); or (v) the date on which the Settlement Class Member no longer has the right to cure such Deficiencies or provide additional information or documentation, in accordance with Section 8.5; provided, however, that to the extent the volume of claims warrants, these deadlines may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof).

(c) Notice Content

(i) Notices of Monetary Award Claim Determination that provide an adverse determination will include a short statement regarding the reasons for the adverse determination and information regarding how the Settlement Class Member can appeal the determination, as set forth in Section 9.7. An adverse Notice of Monetary Award Claim Determination does not preclude a Settlement Class Member from submitting a Claim Package in the future for a Monetary Award should the Retired NFL Football Player's medical condition change. The Claims Administrator shall develop reasonable procedures and rules to ensure the right of Settlement Class Members to submit a Claim Package for the same or different Qualifying Diagnoses in the future, while preventing unwarranted repetitive claims that do not disclose materially changed circumstances from prior claims made by the Settlement Class Member.

(ii) Notices of Monetary Award Claim Determination that provide a determination that the Settlement Class Member is entitled to a Monetary Award will provide: (a) the net amount of that Monetary Award after application of Offsets; (b) a listing of the Offsets applied to that Monetary Award; (c) the Lien

Resolution Administrator's determination of any amount deducted from the Monetary Award to satisfy identified Liens, as set forth in ARTICLE XI; or the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Monetary Award under which identified Liens shall be resolved, as set forth in ARTICLE XI; (d) information regarding how the Settlement Class Member can appeal the Monetary Award determination, as set forth in Section 9.7; and (e) information regarding the timing of payment, as set forth in Section 9.3.

(d) NFL Parties' and Co-Lead Class Counsel's Review of Claim Packages. If a Notice of Monetary Award Determination provides a determination that the Settlement Class Member is entitled to a Monetary Award, the Claims Administrator will make the Settlement Class Member's Claim Package and the review determinations available to the NFL Parties and Co-Lead Class Counsel.

Section 9.2 Derivative Claimant Award Determination. Based upon its review of the Derivative Claim Package, and the results of any investigations of the Derivative Claimant's claim, the Claims Administrator will determine whether a Derivative Claimant qualifies for a Derivative Claimant Award, as set forth in Section 7.3.

(a) Timing of Derivative Claimant Award Determination. The Claims Administrator will make such determination and will send a corresponding Notice of Derivative Claimant Award Determination to the Settlement Class Member and the NFL Parties no later than thirty (30) days from the later of: (i) the date when a completed Derivative Claim Package that is free from all Deficiencies is received by the Claims Administrator; (ii) the date when all Deficiencies with a Settlement Class Member's Derivative Claim Package have been determined by the Claims Administrator to be satisfactorily cured; (iii) the date, if any, on which the additional information or documentation identified in the Notice of Deficiency, if applicable, has been timely provided to the Claims Administrator; or (iv) the date on which the Settlement Class Member no longer has the right to cure such Deficiencies or provide additional information or documentation, in accordance with Section 8.5; provided, however, that to the extent the volume of claims warrants, these deadlines may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof).

(b) Notice Content

(i) Notices of Derivative Claimant Award Determination that provide an adverse determination will include a short statement regarding the reasons for the adverse determination and information regarding how the Settlement Class Member can appeal the determination, as set forth in Section 9.7. An adverse Notice of Derivative Claimant Award Determination does not preclude a Derivative Claimant from submitting a Derivative Claim Package in the future for a Derivative Claimant Award should the Retired NFL Football Player receive a

Supplemental Monetary Award or succeed on an appeal of a previously denied claim for a Monetary Award.

(ii) Notices of Derivative Claimant Award Determination that provide a determination that the Settlement Class Member is entitled to a Derivative Claimant Award will provide: (a) the amount of that Derivative Claimant Award; (b) the Lien Resolution Administrator's determination of any amount deducted from the Derivative Claimant Award to satisfy identified Liens, as set forth in ARTICLE XI; or the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Derivative Claimant Award under which identified Liens will be resolved, as set forth in ARTICLE XI; (c) information regarding how the Derivative Claimant can appeal the Derivative Claimant Award determination, as set forth in Section 9.7; and (d) information regarding the timing of payment, as set forth in Section 9.4.

(c) NFL Parties' and Co-Lead Class Counsel's Review of Derivative Claim Packages. If a Notice of Derivative Claimant Award Determination provides a determination that the Settlement Class Member is entitled to a Derivative Claimant Award, the Claims Administrator will make the Settlement Class Member's Claim Package and the review determinations available to the NFL Parties and Co-Lead Class Counsel.

Section 9.3 Remuneration and Payment of Monetary Awards.

(a) The Claims Administrator will promptly pay any Monetary Awards to Settlement Class Members who qualify under the terms of the Monetary Award Grid and all applicable Offsets after the Claims Administrator sends a Notice of Monetary Award Claim Determination; provided, however, any such payment will not occur until after the completion of the processes for (i) appealing Monetary Award determinations, as set forth in Section 9.7; (ii) auditing claims and investigating claims for fraud, as set forth in Section 10.3; (iii) identifying and satisfying Liens, as set forth in ARTICLE XI; and (iv) determining if any Derivative Claimants have filed timely, and are entitled to, Derivative Claimant Awards based on their relationship with the subject Retired NFL Football Player. Such payment shall be made consistent with Section 23.3(b)(iv) of this Settlement Agreement.

(b) In connection with a Monetary Award issued to a Representative Claimant, the Claims Administrator will abide by all substantive laws of the domicile of such Representative Claimant concerning distribution and will not issue payment until the Claims Administrator has received from the Settlement Class Member proof of such court approvals or other documents necessary to authorize payment. Where short form procedures exist concerning such distribution that do not require domiciliary court approval or supervision, the Claims Administrator is authorized to adopt those procedures as part of the claims administration process applicable to such Representative Claimant. The Claims Administrator also is authorized to adopt procedures as are approved by the Court to aid or facilitate in the payment of claims to minor, incapacitated or incompetent Settlement Class Members or their guardians.

(c) Upon the completion of the Monetary Award Fund term, as set forth in Section 6.10, the Court shall determine the proper disposition of any funds remaining in the Monetary Award Fund consistent with the purpose of this Settlement, including to promote safety and injury prevention with respect to football players and/or the treatment or prevention of traumatic brain injuries.

Section 9.4 Remuneration and Payment of Derivative Claimant Awards

(a) The Claims Administrator will promptly pay any Derivative Claimant Awards to Settlement Class Members who qualify; provided, however, any such payment will not occur until after expiration or completion of: (i) the time period for Derivative Claimants to file Derivative Claim Packages, as set forth in Section 8.3(a)(ii), has expired; (ii) the process for appealing Derivative Claimant Awards, including appeals by any other Derivative Claimants asserting claims based on the same Retired NFL Football Player, as set forth in Section 9.7; (iii) the process for auditing claims and investigating claims for fraud, set forth in Section 10.3; and (iv) the process for identifying and satisfying Liens, as set forth in ARTICLE XI. Such payment shall be made consistent with Section 23.3(b)(iv) of this Settlement Agreement.

(b) In paying a Derivative Claimant Award to a minor, the Claims Administrator will abide by all substantive laws of the domicile of such Settlement Class Member concerning distribution and will not issue payment until the Claims Administrator has received from the Settlement Class Member proof of such court approvals or other documents necessary to authorize payment. Where short form procedures exist concerning such distribution that do not require domiciliary court approval or supervision, the Claims Administrator is authorized to adopt those procedures as part of the claims administration process applicable to such Settlement Class Members. The Claims Administrator also is authorized to adopt procedures as are approved by the Court to aid or facilitate in the payment of claims to minor, incapacitated or incompetent Settlement Class Members or their guardians.

Section 9.5 Scope of Appeals. The Claims Administrator's determination as to whether a Settlement Class Member is entitled to a Monetary Award or Derivative Claimant Award under this Settlement Agreement, and/or the calculation of the Monetary Award or Derivative Claimant Award, is appealable by the Settlement Class Member, Co-Lead Class Counsel, or the NFL Parties based on their respective good faith belief that the determination by the Claims Administrator was incorrect.

Section 9.6 Appellant Fees and Limitations

(a) Any Settlement Class Member taking an appeal will be charged a fee of One Thousand United States dollars (U.S. \$1,000) by the Claims Administrator that must be paid before the appeal may proceed, which fee will be refunded if the Settlement Class Member's appeal is successful. If the appeal is unsuccessful, the fee will be paid to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

(i) Settlement Class Members may make a hardship request to the Claims Administrator and ask that the fee of One Thousand United States dollars (U.S. \$1,000) be waived for good cause. The Claims Administrator will require that the Settlement Class Member provide such financial information as may be necessary to decide the request to waive the fee, which request shall be approved or denied in the Claims Administrator's sole discretion.

(b) The NFL Parties may appeal Monetary Award or Derivative Claimant Award determinations in good faith. To the extent that Co-Lead Class Counsel believe that the NFL Parties are submitting vexatious, frivolous or bad faith appeals, Co-Lead Class Counsel may petition the Court for appropriate relief.

Section 9.7 Submissions on Appeals

(a) The appellant must submit to the Court his or her notice of appeal, using an Appeals Form to be agreed upon by Co-Lead Class Counsel and the NFL Parties and provided by the Claims Administrator, with written copy to the appellee(s) Settlement Class Member or the NFL Parties (as applicable), Co-Lead Class Counsel, and to the Claims Administrator, no later than thirty (30) days after receipt of a Notice of Monetary Award Claim Determination or Notice of Derivative Claimant Award Determination. Appellants must present evidence in support of their appeal, and any written statements may not exceed five (5) single-spaced pages in length.

(b) The appellee(s) may submit a written opposition to the appeal no later than thirty (30) days after receipt of the Appeals Form. This written opposition must not exceed five (5) single-spaced pages in length. The Court will not deem the lack of an opposition to be an admission regarding the merits of the appeal. The appellant may not submit a reply.

(c) Co-Lead Class Counsel may submit a written statement in support of or opposition to the appeal no later than fifteen (15) days after receipt of the Appeals Form or an appellee's written opposition. This written statement must not exceed five (5) single-spaced pages in length. The Court will not deem the lack of a statement to be an admission regarding the merits of the appeal. The appellant and appellee(s) may each submit a reply.

Section 9.8 Review and Decision. The Court will make a determination based upon a showing by the appellant of clear and convincing evidence. The Court may be assisted, in its discretion, by any member of the Appeals Advisory Panel and/or an Appeals Advisory Panel Consultant. The decision of the Court will be final and binding.

(a) Appeals Advisory Panel and Appeals Advisory Panel Consultants

(i) Within ninety (90) days after the Effective Date, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to, and jointly recommend to the Court for appointment, the members of the Appeals Advisory Panel

and the Appeals Advisory Panel Consultants. Under no circumstances may a member of the Appeals Advisory Panel or an Appeals Advisory Panel Consultant have been convicted of a crime of dishonesty, or serve, on or after the Final Approval Date, as a litigation expert consultant or expert witness in connection with litigation relating to the subject matter of the Class Action Complaint for a party, a Member Club, or an Opt Out, or his, her or its counsel. If selected and approved, under no circumstances shall an Appeals Advisory Panel member or Appeals Advisory Panel Consultant continue to serve in that role if convicted of a crime of dishonesty and/or thereafter retained as an expert consultant or expert witness in connection with litigation relating to the subject matter of the Class Action Complaint by a party, a Member Club, or an Opt Out, or his, her or its counsel.

(ii) Co-Lead Class Counsel and Counsel for the NFL Parties will jointly retain the members of the Appeals Advisory Panel and the Appeals Advisory Panel Consultants appointed by the Court.

(iii) Upon request of the Court or the Special Master, the Appeals Advisory Panel will take all steps necessary to provide sound advice with respect to medical aspects of the Class Action Settlement.

(iv) The Court will oversee the Appeals Advisory Panel and the Appeals Advisory Panel Consultants, and may, in its discretion, request reports or information from the Appeals Advisory Panel or the Appeals Advisory Panel Consultants.

(v) Compensation of the Appeals Advisory Panel and Appeals Advisory Panel Consultants, at a reasonable rate for their time agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, will be paid out of the Monetary Award Fund, except that compensation of an Appeals Advisory Panel member or Appeals Advisory Panel Consultant will be paid out of the BAP fund for reviewing and advising the Court whether a Retired NFL Football player has Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, or none, in cases where there are conflicting diagnoses by Qualified BAP Providers.

(vi) Members of the Appeals Advisory Panel or the Appeals Advisory Panel Consultants may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If any member of the Appeals Advisory Panel or an Appeals Advisory Panel Consultant resigns, dies, is replaced, or is otherwise unable to continue in his or her position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed member for appointment by the Court.

(b) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master will establish and implement procedures to promptly detect and resolve possible conflicts of interest between members of the Appeals Advisory Panel or Appeals

Advisory Panel Consultants, on the one hand, and an appellant or appellee(s), on the other hand. Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) may modify such procedures in the future, if appropriate. For the avoidance of any doubt, employment of the Special Master by any Party as an expert in unrelated matters will not constitute a conflict of interest.

(c) Liability. The Parties, Class Counsel, Counsel for the NFL Parties, and the Special Master, and their respective Affiliates, will not be liable for any act, or failure to act, of a member of the Appeals Advisory Panel or an Appeals Advisory Panel Consultant.

ARTICLE X

Class Action Settlement Administration

Section 10.1 Special Master

(a) Appointment and Oversight

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Class Counsel will request that the Court appoint, in consultation with Co-Lead Class Counsel and Counsel for the NFL Parties, a Special Master pursuant to Federal Rule of Civil Procedure 53.

(ii) It is the intention of the Parties that the Special Master will perform his or her responsibilities and take all steps necessary to faithfully oversee the implementation and administration of the Settlement Agreement. The Special Master shall be appointed for a term of five (5) years commencing on the Effective Date. The term of the Special Master shall be extended, or a new Special Master shall be appointed, for additional five-year terms for the life of the Settlement Agreement, unless the Court determines, in consultation with Co-lead Class Counsel and Counsel for the NFL Parties, that the Special Master's role is no longer necessary.

(iii) The Special Master will maintain at all times appropriate and sufficient bonding insurance in connection with his or her performance of responsibilities under the Settlement Agreement. The cost for this insurance will be paid out of the Monetary Award Fund.

(iv) The Court may, at its sole discretion, request reports or information from the Special Master. The Special Master will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs. The Claims Administrator may assist with such reports if requested by the Special Master.

(v) Following the five (5) year term of the Special Master, and any extension(s) thereof, oversight of the administration of the Class Action Settlement will revert to the Court.

(b) Roles and Responsibilities

(i) The Special Master will, among other responsibilities set forth in this Settlement Agreement:

(1) Provide reports or information that the Court may, at its sole discretion, request from the Special Master, who will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs;

(2) Oversee complaints raised by Co-Lead Class Counsel, Counsel for the NFL Parties, the BAP Administrator, Claims Administrator and/or the Lien Resolution Administrator regarding aspects of the Class Action Settlement;

(3) Hear appeals of registration determinations, if requested by the Court, as set forth in Section 4.3(a)(iv);

(4) Oversee the BAP Administrator, Claims Administrator and Lien Resolution Administrator, as set forth in Section 5.6(a)(iv), Section 10.2(a)(iv), and Section 11.1(a)(iv), and receive monthly and annual reports from those Administrators; and

(5) Oversee fraud detection and prevention procedures, and review and decide the appropriate disposition of potentially fraudulent claims as further specified in Section 10.3(i).

(c) Compensation and Expenses. Annual compensation of the Special Master will not exceed Two Hundred Thousand United States dollars (U.S. \$200,000). The annual compensation and reasonable out-of-pocket costs and expenses of the Special Master directly incurred as a result of the performance of his or her responsibilities will be paid out of the Monetary Award Fund. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the Special Master's out-of-pocket costs and expenses, in which case the Court will determine the reasonableness of such costs and expenses. If the Court determines that any costs and expenses are unreasonable, the Special Master will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the Special Master will refund that amount to the Monetary Award Fund.

(d) Replacement. The Court, in its discretion, can replace the Special Master for good cause. If the Special Master resigns, dies, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties may file a motion for the appointment by the Court of a new Special Master.

(e) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the Special Master, on the one hand, and Settlement Class

Members (and counsel individually representing them, if any), Class Counsel, the NFL Parties, Counsel for the NFL Parties, the BAP Administrator, the Claims Administrator, or the Lien Resolution Administrator, on the other hand. Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval of the Court, may modify such procedures in the future, if appropriate. For the avoidance of any doubt, employment of the Special Master by any Party as an expert in unrelated matters will not constitute a conflict of interest.

Section 10.2 Claims Administrator

(a) Appointment and Oversight

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Class Counsel will request that the Court appoint BrownGreer PLC as Claims Administrator. Within ten (10) days after the Effective Date, Co-Lead Class Counsel will retain the Claims Administrator appointed by the Court.

(ii) Co-Lead Class Counsel's retention agreement with the Claims Administrator will provide that the Claims Administrator will perform its responsibilities and take all steps necessary to faithfully implement and administer the Settlement Agreement, and will require that the Claims Administrator maintain at all times appropriate and sufficient bonding insurance in connection with its performance of its responsibilities under the Settlement Agreement.

(iii) The Court may, at its sole discretion, request reports or information from the Claims Administrator. The Claims Administrator will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs.

(iv) The Special Master, for the duration of his or her term, will oversee the Claims Administrator, and may, at his or her sole discretion, request reports or information from the Claims Administrator.

(v) Beyond the reporting requirements set forth in Section 10.2(a)(iii)-(iv), beginning one month after the Effective Date, the Claims Administrator will issue a regular monthly report to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, and Counsel for the NFL Parties during the first three years of the Monetary Award Fund, and thereafter on a quarterly basis or as reasonably agreed upon by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and the NFL Parties, regarding the status and progress of claims administration. The monthly (or quarterly) report will include, without limitation: (a) the monthly and total number of Settlement Class Members who registered timely, and the biographical information for each Settlement Class Member who registered timely in the preceding month, as set forth in Section 4.2(c); (b) the identity of each Settlement Class Member who submitted a Claim Package or Derivative Claim Package in the preceding month, the review status of such package (*e.g.*, under

preliminary review, subject to a Notice of Deficiency, subject to verification and investigation, received a Notice of Claim Determination), and the monthly and total number of Settlement Class Member claims for Monetary Awards and Derivative Claimant Awards; (c) the monthly and total number of Monetary Awards and Derivative Claimant Awards paid; (d) the monthly and total number of each Qualifying Diagnosis for which a Monetary Award has been paid; (e) the monthly and total number of Settlement Class Members for whom appeals are pending regarding Monetary Awards and Derivative Claimant Awards; (f) the monthly identification/breakdown of physicians diagnosing Qualifying Diagnoses and/or law firms representing Settlement Class Members who submitted claims for Monetary Awards and Derivative Claimant Awards; (g) the monthly expenses/administrative costs, including a summary accounting of the administrative expenses incurred by the Claims Administrator; and (h) any other information requested by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(vi) Beginning on the first January after the Effective Date, the Claims Administrator will provide annual financial reports to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties, based on information from the preceding year, regarding: (a) the number of Settlement Class Members, broken down by Qualifying Diagnosis, who received Monetary Awards, and the corresponding number of Settlement Class Members who sought but were found by the Claims Administrator or the Court not to qualify for Monetary Awards; (b) the number of Settlement Class Members who received Derivative Claimant Awards, and the corresponding number of Settlement Class Members who sought but were found by the Claims Administrator or the Court not to qualify for Derivative Claimant Awards; (c) the monetary amounts paid through Monetary Awards and Derivative Claimant Awards, including the monetary amounts over the term of the Class Action Settlement; (d) the number of Settlement Class Members for whom appeals are pending regarding Monetary Awards and Derivative Claimant Awards; (e) the identification/breakdown of physicians diagnosing Qualifying Diagnoses and/or law firms representing Settlement Class Members who submitted claims for Monetary Awards and Derivative Claimant Awards; (f) expenses/administrative costs, including a summary accounting of the administrative expenses incurred by the Claims Administrator; (g) the projected expenses/administrative costs for the remainder of the Monetary Award Fund term; (h) the monies remaining in the Monetary Award Fund; and (i) any other information requested by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(vii) The NFL Parties may elect, at their own expense, to cause an audit to be performed by a certified public accountant of the financial records of the Claims Administrator, and the Claims Administrator shall cooperate in good faith with the audit. Audits may be conducted at any time during the term of the Monetary Award Fund. Complete copies of the audit findings report will be provided to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, and Counsel for the NFL Parties.

(b) Roles and Responsibilities

(i) The Claims Administrator will, among other responsibilities set forth in this Settlement Agreement:

(1) Maintain the Settlement Website, as set forth in Section 4.1(a);

(2) Maintain an automated telephone system to provide information about the Class Action Settlement, as set forth in Section 4.1(b);

(3) Establish and administer both online and hard copy registration methods, as set forth in Section 4.2(a);

(4) Review a purported Settlement Class Member's registration and determine its validity, as set forth in Section 4.3;

(5) Process and review Claim Packages and Derivative Claim Packages, as set forth in ARTICLE VIII;

(6) Determine whether Settlement Class Members who submit Claim Packages and Derivative Claim Packages are entitled to Monetary Awards or Derivative Claimant Awards, as set forth in ARTICLE VI and ARTICLE VII;

(7) Audit Claim Packages and Derivative Claim Packages, and establish and implement procedures to detect and prevent fraudulent submissions to, and payments of fraudulent claims from, the Monetary Award Fund, as set forth in Section 10.3; and

(8) Perform such other tasks reasonably necessary to accomplish the goals contemplated by this Settlement Agreement, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties.

(c) Compensation and Expenses. Reasonable compensation of the Claims Administrator, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and reasonable out-of-pocket costs and expenses directly incurred as a result of the Claims Administrator's responsibilities set forth in this Settlement Agreement will be paid out of the Monetary Award Fund. The Claims Administrator shall submit an annual budget to the Court for review and approval. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the Claims Administrator's out-of-pocket costs and expenses, in which case the Court will determine (or may, in its discretion, refer the challenge to the Special Master to determine) the reasonableness of such costs and expenses. If the Court or Special Master, as applicable, determines that any costs and expenses are unreasonable, the Claims Administrator will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the Claims Administrator will refund that amount to the Monetary Award Fund.

(d) Liability. The Parties, Class Counsel, Counsel for the NFL Parties, and the Special Master, and their respective Affiliates, will not be liable for any act, or failure to act, of the Claims Administrator.

(e) Replacement. The Claims Administrator may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If the Claims Administrator resigns, dies, is replaced, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties will jointly recommend a new proposed Claims Administrator for appointment by the Court.

(f) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, the Special Master and the Claims Administrator will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the Claims Administrator, including, without limitation, its executive leadership team and all employees working on the Class Action Settlement, on the one hand, and Settlement Class Members and their counsel (if any), the NFL Parties, Counsel for the NFL Parties, or the Special Master, on the other hand. Co-Lead Class Counsel, Counsel for the NFL Parties, and the Claims Administrator, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), may modify such procedures in the future, if appropriate. Notwithstanding anything herein to the contrary, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master understand that the Claims Administrator regularly provides settlement claims administration and other related services to settling parties and their attorneys, and the Special Master, Co-Lead Class Counsel, and Counsel for the NFL Parties acknowledge and agree that it shall not be a conflict of interest for the Claims Administrator to provide such services to such individuals or to receive compensation for such work.

Section 10.3 Audit Rights and Detection and Prevention of Fraud

(a) Co-Lead Class Counsel and the NFL Parties each will have the absolute right and discretion, at any time, but at their sole expense, in good faith to conduct, or have conducted by an independent auditor, audits to verify Monetary Award and Derivative Claimant Award claims submitted by Settlement Class Members.

(b) In addition, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Claims Administrator will establish and implement procedures to detect and prevent fraudulent submissions to, and payments of fraudulent claims from, the Monetary Award Fund. Among other fraud detection and prevention procedures, the Claims Administrator, with the approval of Co-Lead Class Counsel and Counsel for the NFL Parties, will institute the following procedures relating to claim audits:

(i) A Settlement Class Member whose claim has been selected for audit by the Claims Administrator, Co-Lead Class Counsel or Counsel for the

NFL Parties may be required to submit additional records, including medical records, and information as requested by the auditing party; and

(ii) A Settlement Class Member who refuses to cooperate with an audit, including by unreasonably failing or refusing to provide the auditing party with all records and information sought within the time frame specified, will have the claim denied by the Claims Administrator, without right to an appeal.

(c) On a monthly basis, the Claims Administrator will audit ten percent (10%) of the total Claim Packages and Derivative Claim Packages that the Claims Administrator has found to qualify for Monetary Awards or Derivative Claimant Awards during the preceding month. The Claims Administrator will select such Claim Packages and Derivative Claim Packages for auditing on a random basis or to address a specific concern raised by a Claim Package or Derivative Claim Package, but will audit at least one Claim Package, if any qualify, each month.

(d) In addition, the Claims Administrator will audit Claim Packages that: (i) seek a Monetary Award for a given Qualifying Diagnosis when the Retired NFL Football Player took part in the BAP within the prior 365 days and was not diagnosed with that Qualifying Diagnosis during the BAP baseline assessment examination; (ii) seek a Monetary Award for a given Qualifying Diagnosis when the Retired NFL Football Player submitted a different Claim Package within the prior 365 days based upon a diagnosis of that same Qualifying Diagnosis by a different physician, and that Claim Package was found not to qualify for a Monetary Award; and (iii) reflect a Qualifying Diagnosis made through a medical examination conducted at a location other than a standard treatment or diagnosis setting (*e.g.*, hotel rooms).

(e) Upon selection of a Settlement Class Member's Claim Package for audit, the Claims Administrator will notify Co-Lead Class Counsel, the Settlement Class Member (and his/her individual counsel, if applicable), and Counsel for the NFL Parties of the selection and will require that, within ninety (90) days, or such other time as is necessary and reasonable under the circumstances, the audited Settlement Class Member submit to the Claims Administrator, to the extent not already provided, such information as may be necessary and appropriate to audit the Claim Package, which may include the following records and information:

(i) All of the Retired NFL Football Player's medical records in the Settlement Class Member's possession, custody, or control that relate to the underlying medical condition that is the basis for the Qualifying Diagnosis claimed by the Settlement Class Member;

(ii) A list of all health care providers seen by the Retired NFL Football Player in the last five (5) years;

(iii) The Settlement Class Member's (or subject Retired NFL Football Player's) employment records from Member Clubs or other NFL Football employers, but only to the extent that the Settlement Class Member is authorized under

applicable state law or Collective Bargaining Agreement to request and receive such records from the Member Club or other NFL Football employer;

(iv) Such other relevant documents or information within the Settlement Class Member's possession, custody, or control as may reasonably be requested by the Claims Administrator under the circumstances, including, if necessary, authorizations to obtain the medical records of the Settlement Class Member (or subject Retired NFL Football Player) created or obtained by any health care providers seen by the Settlement Class Member (or subject Retired NFL Football Player) in the last five (5) years; and

(v) Where the audit is conducted because of the circumstances set forth in Section 10.3(d), authorizations to obtain the medical records of the Settlement Class Member (or subject Retired NFL Football Player) held by the primary care physician of the Retired NFL Football Player and the medical records of all other physicians or neuropsychologists who have examined the Retired NFL Football Player relating to the Qualifying Diagnosis.

(f) Upon selection of a Settlement Class Member's Derivative Claim Package for audit, the Claims Administrator will notify Co-Lead Class Counsel, the Settlement Class Member (and his/her individual counsel, if applicable), and Counsel for the NFL Parties of the selection and will require that, within ninety (90) days, or such other time as is necessary and reasonable under the circumstances, the audited Settlement Class Member submit to the Claims Administrator, to the extent not already provided, such information as may be necessary and appropriate to audit the Claim Package, which may include relevant documents or information within the Settlement Class Member's possession, custody, or control as may reasonably be requested by the Claims Administrator under the circumstances.

(g) When auditing a Settlement Class Member's claim for a Monetary Award or Derivative Claimant Award, the Claims Administrator will review the records and information relating to that claim and determine whether the Claim Form or Derivative Claim Form misrepresents, omits, and/or conceals material facts that affect the claim.

(h) If, upon completion of an audit, the Claims Administrator determines that there has not been a misrepresentation, omission, or concealment of a material fact made in connection with the claim, the process of issuing a Monetary Award or Derivative Claimant Award, subject to appeal, will proceed.

(i) If, upon completion of an audit, the Claims Administrator determines that there has been a misrepresentation, omission, or concealment of a material fact made in connection with the claim, the Claims Administrator will notify the Settlement Class Member and will refer the claim to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) for review and findings. The Special Master's review and findings shall take into account whether the misrepresentation, omission or concealment was intentional, and may include the

following relief, without limitation: (a) denial of the claim in the event of fraud; (b) additional audits of claims from the same law firm or physician (if applicable), including those already paid; (c) referral of the attorney or physician (if applicable) to the appropriate disciplinary boards; (d) referral to federal authorities; (e) disqualification of the attorney, physician and/or Settlement Class Member from further participation in the Class Action Settlement; and/or (f) if a law firm is found by the Claims Administrator to have submitted more than one fraudulent submission on behalf of Settlement Class Members, claim submissions by that law firm will no longer be accepted, and attorneys' fees paid to the firm by the Settlement Class Member will be forfeited and paid to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

(j) In addition, if the Claims Administrator at any time makes a finding (based on its own detection processes or from information received from Co-Lead Class Counsel or Counsel for the NFL Parties) of fraud by a Settlement Class Member submitting a claim for a Monetary Award or Derivative Claimant Award, and/or by the physician providing the Qualifying Diagnosis, including, without limitation, misrepresentations, omissions, or concealment of material facts relating to the claim, the Claims Administrator will notify the Settlement Class Member and will make a recommendation to Co-Lead Class Counsel and Counsel for the NFL Parties to refer the claim to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) for review and findings that may include, without limitation, those set forth in Section 10.3(i).

(i) If both Co-Lead Class Counsel and Counsel for the NFL Parties do not agree with the Claims Administrator's recommendation to refer a claim to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), they will notify the Claims Administrator, who will continue with the processing of the claim.

Section 10.4 The Claims Administrator, in consultation with Co-Lead Class Counsel and Counsel for the NFL Parties, will also establish system-wide processes to detect and prevent fraud, including, without limitation, claims processing quality training and review and data analytics to spot "red flags" of fraud, including, without limitation, alteration of documents, questionable signatures, duplicative documents submitted on claims, the number of claims from similar addresses or supported by the same physician or office of physicians, data metrics indicating patterns of fraudulent submissions, and such other attributes of claim submissions that create a reasonable suspicion of fraud.

ARTICLE XI

Identification and Satisfaction of Liens

Section 11.1 Lien Resolution Administrator

(a) Appointment and Oversight

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Class Counsel, will request that the Court appoint Garretson Group as Lien Resolution Administrator. Within ten (10) days after the Effective Date, Co-Lead Class Counsel will retain the Lien Resolution Administrator appointed by the Court.

(ii) Co-Lead Class Counsel's retention agreement with the Lien Resolution Administrator will provide that the Lien Resolution Administrator will perform its responsibilities and take all steps necessary to faithfully implement and administer the Lien-related provisions of the Settlement Agreement, and will require that the Lien Resolution Administrator maintain at all times appropriate and sufficient bonding insurance in connection with its performance of its responsibilities under the Settlement Agreement.

(iii) The Court may, at its sole discretion, request reports or information from the Lien Resolution Administrator. The Lien Resolution Administrator will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs.

(iv) The Special Master, for the duration of his or her term, will oversee the Lien Resolution Administrator, and may, at his or her sole discretion, request reports or information from the Lien Resolution Administrator.

(b) Roles and Responsibilities. The Lien Resolution Administrator will, among other responsibilities set forth in this Settlement Agreement, administer the process for the identification and satisfaction of all applicable Liens, as set forth in Section 11.3. Each Settlement Class Member (and his or her respective counsel, if applicable) claiming a Monetary Award or Derivative Claimant Award, however, will be solely responsible for the satisfaction and discharge of all Liens.

(c) Compensation and Expenses. Reasonable compensation of the Lien Resolution Administrator, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and reasonable out-of-pocket costs and expenses directly incurred as a result of the Lien Resolution Administrator's responsibilities will be paid out of the Monetary Award Fund, unless otherwise specified herein. The Lien Resolution Administrator shall submit an annual budget to the Court for review and approval. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the Lien Resolution Administrator's out-of-pocket costs and expenses, in which case the Court will determine (or may, in its discretion, refer the challenge to the Special Master to determine) the reasonableness of such costs and expenses. If the Court or Special Master, as applicable, determines that any costs and expenses are unreasonable,

the Lien Resolution Administrator will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the Lien Resolution Administrator will refund that amount to the Monetary Award Fund.

(d) Liability. The Parties, Class Counsel, Counsel for the NFL Parties, and the Special Master, and their respective Affiliates, will not be liable for any act, or failure to act, of the Lien Resolution Administrator.

(e) Replacement. The Lien Resolution Administrator may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If the Lien Resolution Administrator resigns, dies, is replaced, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed Lien Resolution Administrator for appointment by the Court.

Section 11.2 Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, the Special Master and the Lien Resolution Administrator will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the Lien Resolution Administrator, including, without limitation, its executive leadership team and all employees working on the Class Action Settlement, on the one hand, and Settlement Class Members (and counsel individually representing them, if any), the NFL Parties, Counsel for the NFL Parties, or the Special Master, on the other hand. Co-Lead Class Counsel, Counsel for the NFL Parties, and the Lien Resolution Administrator, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), may modify such procedures in the future, if appropriate. Notwithstanding anything herein to the contrary, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master understand that the Lien Resolution Administrator regularly provides lien resolution and other related services to settling parties and their attorneys, and the Special Master, Co-Lead Class Counsel, and Counsel for the NFL Parties acknowledge and agree that it shall not be a conflict of interest for the Lien Resolution Administrator to provide such services to such individuals or to receive compensation for such work.

Section 11.3 Lien Identification, Satisfaction and Discharge

(a) Each Settlement Class Member claiming a Monetary Award or Derivative Claimant Award will identify all Liens held or asserted by Governmental Payors or Medicare Part C or Part D Program sponsors with respect to any Monetary Award or Derivative Claimant Award in his or her Claim Form or Derivative Claim Form.

(b) Each Settlement Class Member (and counsel individually representing him or her, if any) shall cooperate with the Lien Resolution Administrator to identify all Liens held or asserted by Governmental Payors or Medicare Part C or Part D Program sponsors with respect to any Monetary Award or Derivative Claimant Award as

a prerequisite to receiving payment of any Monetary Award or Derivative Claimant Award, including by providing the requested information and authorizations to the Lien Resolution Administrator and/or Claims Administrator in the timeframe specified for so doing.

(c) Among other things, each Settlement Class Member will authorize the Lien Resolution Administrator to:

(i) Establish procedures and protocols to identify and resolve Liens held or asserted by Governmental Payors or Medicare Part C or Part D Program sponsors with respect to any Monetary Award or Derivative Claimant Award;

(ii) Undertake to obtain an agreement in writing and other supporting documentation with CMS promptly following the Effective Date that:

(1) Establishes a global repayment amount per Qualifying Diagnosis and/or for all or certain Qualifying Diagnoses for Settlement Class Members who are or were beneficiaries of the Medicare Program, or, alternatively, otherwise sets forth a conditional payment resolution process. Such amounts will be based on the routine costs associated with the medically accepted standard of care for the treatment and management of each Qualifying Diagnosis, as well as actual utilization of treatment by Settlement Class Members related to each Qualifying Diagnosis. The agreement, in writing, and supporting documentation with CMS will demonstrate reasonable proof of satisfaction of Medicare's Part A and/or Part B fee-for-service recovery claim in connection with Settlement Class Member's (who are or were beneficiaries of the Medicare Program) receipt of any Monetary Award or Derivative Claimant Award and any benefits provided pursuant to this Settlement Agreement.

(2) Establishes reporting processes recognized by CMS as satisfying the reporting obligations, if any, under the mandatory Medicare reporting requirements of Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007, 110 Pub. L. No. 173, 121 Stat. 2492 ("MMSEA") in connection with this Settlement Agreement;

(iii) Fulfill all state and federal reporting obligations, including those to CMS that are agreed upon with CMS;

(iv) Satisfy Lien amounts owed to a Governmental Payor or, to the extent identified by the Class Member pursuant to Section 11.3(a), Medicare Part C or Part D Program sponsor for medical items, services, and/or prescription drugs paid on behalf of Settlement Class Members out of any Monetary Award or Derivative Claimant Award to the Settlement Class Member pursuant to this Settlement Agreement; and

(v) Transmit all information received from any Governmental Payor or Medicare Part C or Part D Program sponsor pursuant to such authorizations (i) to the NFL Parties, Claims Administrator, and/or Special Master solely for purposes of verifying compliance with the MSP Laws or other similar reporting

obligations and for verifying satisfaction and full discharge of all such Liens, or (ii) as otherwise directed by the Court.

(d) If the Lien Resolution Administrator is able to negotiate a global repayment amount for some or all of the Qualifying Diagnoses for Settlement Class Members who are or were beneficiaries of the Medicare Program with CMS, as set forth in Section 11.3(c)(ii)(1), the Lien Resolution Administrator shall: (i) satisfy such global repayment amount out of any Monetary Award to such Settlement Class Member; and (ii) provide that reasonable compensation of the Lien Resolution Administrator for such efforts, will be paid out of any Monetary Award to such Settlement Class Member.

(e) If the Lien Resolution Administrator is unable to negotiate a global repayment amount for some or all of the Qualifying Diagnoses for Settlement Class Members who are or were beneficiaries of the Medicare Program with CMS, as set forth in Section 11.3(c)(ii)(1), the Lien Resolution Administrator will put in place a mechanism for resolving these Liens on an individual basis, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties. In addition, the Lien Resolution Administrator will put in place a mechanism for resolving Liens owed to other Governmental Payors or Medicare Part C or Part D Program sponsors on an individual basis, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties. These mechanisms for resolving such Liens on an individual basis will allow the Lien Resolution Administrator to: (i) satisfy such Lien amounts owed for medical items, services, and/or prescription drugs paid on behalf of a Settlement Class Member out of any Monetary Award to the Settlement Class Member, subject to the Settlement Class Member's right to object to the fact and/or amount of such Lien amount; and (ii) provide that the Lien Resolution Administrator's reasonable costs and expenses incurred in resolving such Liens, including the reasonable compensation of the Lien Resolution Administrator for such efforts, will be paid out of any Monetary Award to the Settlement Class Member.

(f) The Parties further understand and agree that the Lien Resolution Administrator's performance of functions described in this Article is not intended to modify the legal and financial rights and obligations of Settlement Class Members, including the duty to pay and/or arrange for reimbursement of each Settlement Class Member's past, current, or future bills or costs, if any, for medical items, services, and/or prescription drugs, and to satisfy and discharge any and all statutory recovery obligations for any Liens.

(g) Notwithstanding any other provision of this Settlement Agreement relating to timely payment, the Claims Administrator will not pay any Monetary Award to a Settlement Class Member who is or was entitled to benefits under a Governmental Payor program or Medicare Part C or Part D Program prior to: (i) the Lien Resolution Administrator's determination of the final amount needed to satisfy the reimbursement obligation that any Governmental Payor or Medicare Part C or Part D Program sponsor states is due and owing (as reflected in a final demand letter or other formal written communication), and satisfaction and discharge of that reimbursement obligation as evidenced by the Lien Resolution Administrator's receipt of a written

satisfaction and discharge from the applicable Governmental Payor or Medicare Part C or Part D Program sponsor; or (ii) the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Monetary Award or Derivative Claimant Award under which such reimbursement obligation will be resolved.

(h) Notwithstanding any other provision of this Settlement Agreement relating to timely payment, if any person or entity claims any Liens, other than those set forth in Section 11.3(g), with respect to a Settlement Class Member's Monetary Award or Derivative Claimant Award, then the Claims Administrator will not pay any such Monetary Award or Derivative Claimant Award if the Claims Administrator or Lien Resolution Administrator has received notice of that Lien and there is a legal obligation to withhold payment to the Settlement Class Member under applicable federal or state law. The Claims Administrator will hold such Monetary Award or Derivative Claimant Award in an escrow account until the Settlement Class Member (and counsel individually representing him or her, if any) presents documentary proof, such as a court order or release or notice of satisfaction by the party asserting the Lien, that such Lien has been satisfied and discharged; or until the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Monetary Award, Supplemental Monetary Award or Derivative Claimant Award under which such reimbursement obligation will be resolved.

(i) Settlement Class Members who are or were entitled to benefits under Medicare Part C or Part D Programs may be required by statute or otherwise, when making a claim for and/or receiving compensation pursuant to this Settlement Agreement, to notify the relevant Medicare Part C or Part D Program sponsor or others of the existence of, and that Settlement Class Member's participation in, this Class Action Settlement. It is the sole responsibility of each Settlement Class Member to determine whether he or she has such a notice obligation, and to perform timely any such notice reporting.

Section 11.4 Indemnification. Each Settlement Class Member, on his or her own behalf, and on behalf of his or her estate, predecessors, successors, assigns, representatives, heirs, beneficiaries, executors, and administrators, in return for the benefits and consideration provided in this Settlement Agreement, will indemnify and forever hold harmless, and pay all final judgments, damages, costs, expenses, fines, penalties, interest, multipliers, or liabilities, including the costs of defense and attorneys' fees of, the Released Parties against any and all claims by Other Parties arising from, relating to, or resulting from (a) any undisclosed Lien relating to, or resulting from, compensation or benefits received by a Settlement Class Member pursuant to this Class Action Settlement and/or (b) the failure of a Settlement Class Member timely and accurately to report or provide information that is necessary for compliance with the MSP Laws, or for the Lien Resolution Administrator to identify and/or satisfy all Governmental Payors or Medicare Part C or Part D Program sponsors who may hold or assert a reimbursement right. The amount of indemnification will not exceed the total Monetary Award or Derivative Claimant Award for that Settlement Class Member's claim. **CLASS AND SUBCLASS REPRESENTATIVES AND SETTLEMENT CLASS MEMBERS ACKNOWLEDGE THAT THIS SECTION COMPLIES**

WITH ANY REQUIREMENT TO EXPRESSLY STATE THAT LIABILITY FOR SUCH CLAIMS IS INDEMNIFIED AND THAT THIS SECTION IS CONSPICUOUS AND AFFORDS FAIR AND ADEQUATE NOTICE.

Section 11.5 No Admission. Any reporting performed by the Lien Resolution Administrator and/or Claims Administrator for the purpose of resolving Liens, if any, related to compensation provided to Settlement Class Members pursuant to this Settlement Agreement does not constitute an admission by any Settlement Class Member or any Released Party of any liability or evidence of liability in any manner.

Section 11.6 The foregoing provisions of this Article are solely for the several benefit of the NFL Parties, the Lien Resolution Administrator, the Special Master, and the Claims Administrator. No Settlement Class Member (or counsel individually representing them, if any) will have any rights or defenses based upon or arising out of any act or omission of the NFL Parties or any Administrator with respect to this Article.

**ARTICLE XII
Education Fund**

Section 12.1 An Education Fund will be established to fund programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of Retired NFL Football Players regarding the NFL CBA Medical and Disability Benefits programs and other educational initiatives benefitting Retired NFL Football Players. The Court shall approve these education programs, with input from Co-Lead Class Counsel, Counsel for the NFL Parties and medical experts, as further set forth below. Co-Lead Class Counsel and Counsel for the NFL Parties will agree to a protocol through which Retired NFL Football Players will actively participate in such initiatives.

Section 12.2 Co-Lead Class Counsel, with input from Counsel for the NFL Parties, and with Court approval, will take all necessary steps to establish the Education Fund and establish procedures and controls to manage and account for the disbursement of funds to the education projects and all other costs associated with the Education Fund. The costs and expenses to administer the Education Fund will be paid out of the Education Fund Amount.

**ARTICLE XIII
Preliminary Approval and Class Certification**

Section 13.1 Promptly after execution, Class Counsel will file the Motion for Preliminary Approval of the Class Action Settlement and the Settlement Agreement as an exhibit thereto. Simultaneously, the Class and Subclass Representatives will file a Motion for Certification of Rule 23(b)(3) Class and Subclasses for Purposes of Settlement.

Section 13.2 The Parties agree to take all actions reasonably necessary to obtain the Preliminary Approval and Class Certification Order from the Court.

Section 13.3 The Parties agree to jointly request that the Court stay this action and all Related Lawsuits, and enjoin all Settlement Class Members, unless and until they have been excluded from the Settlement Class by action of the Court, or until the Court denies approval of the Class Action Settlement, or until the Settlement Agreement is otherwise terminated, from filing, commencing, prosecuting, intervening in, participating in and/or maintaining, as plaintiffs, claimants, or class members in, any other lawsuit, including, without limitation, a Related Lawsuit, or administrative, regulatory, arbitration, or other proceeding in any jurisdiction (whether state, federal or otherwise), against Released Parties based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances at issue, in the Class Action Complaint, Related Lawsuits and/or the Released Claims, except that claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits will not be stayed or enjoined. For the avoidance of any doubt, the Parties are not requesting that the Court stay any actions against Riddell.

(a) The Parties recognize that there may be further pleadings, discovery responses, documents, testimony, or other matters or materials owed by the Parties to each other pursuant to existing pleading requirements, discovery requests, pretrial rules, procedures, orders, decisions, or otherwise. As of the Settlement Date, each Party expressly waives any right to receive, inspect, or hear such pleadings, discovery, testimony, or other matters or materials during the pendency of the settlement proceedings contemplated by this Settlement Agreement and subject to further order of the Court.

Section 13.4 The Parties agree that any certification of the Settlement Class and Subclasses will be for settlement purposes only. The Parties do not waive or concede any position or arguments they have for or against certification of any class for any other purpose in any action or proceeding. Any class certification order entered in connection with this Settlement Agreement will not constitute an admission by the NFL Parties, or finding or evidence, that the Class and Subclass Representatives' claims, or the claims of any other Settlement Class Member, or the claims of the Settlement Class, are appropriate for class treatment if the claims were contested in this or any other federal, state, arbitral, or foreign forum. If the Court enters the proposed form of Preliminary Approval and Class Certification Order, the Final Order and Judgment will provide for vacation of the Final Order and Judgment and the Preliminary Approval and Class Certification Order in the event that this Settlement Agreement does not become effective.

Section 13.5 Upon entry of the Preliminary Approval and Class Certification Order, the statutes of limitation applicable to any and all claims or causes of action that have been or could be asserted by or on behalf of any Settlement Class Members related to the subject matter of the Settlement Agreement will be tolled and stayed to the extent not already tolled by the initiation of an action in this litigation or a Related Lawsuit. The limitations period will not begin to run again for any Settlement Class Member unless and until he or she is deemed to have Opted Out of the Settlement Class, this Settlement Agreement is terminated pursuant to ARTICLE XVI, or a Settlement Class Member's Release and Covenant Not to Sue has been rendered null and

void by the Court as set forth in Section 25.6(g). In the event the Settlement Agreement is terminated pursuant to ARTICLE XVI, to the extent not otherwise tolled, the limitations period for each Settlement Class Member as to whom the limitations period had not expired as of the date of the Preliminary Approval and Class Certification Order will extend for the longer of thirty (30) days from the last required issuance of notice of termination or the period otherwise remaining before expiration. Notwithstanding the tolling agreement herein, the Parties recognize that any time already elapsed for any Class or Subclass Representatives or Settlement Class Members on any applicable statutes of limitations will not be reset, and no expired claims will be revived, by virtue of this tolling agreement. Class and Subclass Representatives and Settlement Class Members do not admit, by entering into this Settlement Agreement, that they have waived any applicable tolling protections available as a matter of law or equity. Nothing in this Settlement Agreement will constitute an admission in any manner that the statute of limitations has been tolled for anyone outside the Settlement Class, nor does it constitute a waiver of legal positions regarding tolling.

ARTICLE XIV

Notice, Opt Out, and Objections

Section 14.1 Notice

(a) As part of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Plaintiffs will submit to the Court a Settlement Class Notice Plan agreed upon by Class Counsel and Counsel for the NFL Parties.

(b) The Settlement Class Notice Plan, to be implemented by the Settlement Class Notice Agent following the Court's entry of the Preliminary Approval and Class Certification Order, and approval of the Settlement Class Notice (in the form of Exhibit 5), paid for by the NFL Parties' transfer of Four Million United States dollars (U.S. \$4,000,000) to Co-Lead Class Counsel, as set forth in Sections 23.1 and 23.3, will be designed to meet the requirements of Fed. R. Civ. P. 23 (c)(2)(B), and will include: (i) direct notice by first-class mail; (ii) broad notice through the use of paid media including national radio spots, national consumer magazines, television and internet advertising; and (iii) electronic notice through the Settlement Website created under Section 4.1(a) and an automated telephone system created under Section 4.1(b).

(c) The Parties and the Claims Administrator will maintain a list of the names and addresses of each person to whom the Settlement Class Notice is transmitted in accordance with any order entered by the Court pursuant to ARTICLE XIII. These names and addresses will be kept strictly confidential and will be used only for purposes of administering this Class Action Settlement, except as otherwise ordered by the Court.

(d) Within thirty (30) days of the Effective Date, upon Court approval, Co-Lead Class Counsel shall cause the Settlement Class Supplemental Notice to be disseminated to Settlement Class Members by first-class mail and by posting on the Settlement Website created under Section 4.1(a) and through an automated telephone

system created under Section 4.1(b), to advise Settlement Class Members of the previously disclosed deadlines: (i) to register for participation in the Class Action Settlement, as set forth in Section 4.2; (ii) as to eligible Retired NFL Football Players, to participate in the BAP, as set forth in Section 5.3; and (iii) to submit Claim Packages or Derivative Claim Packages, as set forth in Section 8.3. The Settlement Class Supplemental Notice shall include the above information, and any other information, as agreed upon by Co-Lead Class Counsel and Counsel for the NFL Parties, and approved by the Court.

Section 14.2 Opt Outs

(a) The Settlement Class Notice will provide instructions regarding the procedures that must be followed to Opt Out of the Settlement Class pursuant to Fed. R. Civ. P. 23(c)(2)(B)(v). The Parties agree that, to Opt Out validly from the Settlement Class, a Settlement Class Member must submit a written request to Opt Out stating “I wish to exclude myself from the Settlement Class in *In re: National Football League Players’ Concussion Injury Litigation*, No. 2:12-md-02323” (or substantially similar clear and unambiguous language) to the Claims Administrator on or before such date as is ordered by the Court. That written request also will contain the Settlement Class Member’s printed name, address, telephone number, and date of birth and enclose a copy of his or her driver’s license or other government issued identification. A written request to Opt Out may not be signed using any form of electronic signature, but must contain the dated Personal Signature of the Retired NFL Football Player, Representative Claimant, or Derivative Claimant seeking to exclude himself or herself from the Settlement Class. Attorneys for Settlement Class Members may submit a written request to Opt Out on behalf of a Settlement Class Member, but such request must contain the Personal Signature of the Settlement Class Member. The Claims Administrator will provide copies of all requests to Opt Out to Class Counsel and Counsel for the NFL Parties within seven (7) days of receipt of each such request. Valid requests to Opt Out from the Settlement Class will become effective on the Final Approval Date.

(b) All Settlement Class Members who do not timely and properly Opt Out from the Settlement Class will in all respects be bound by all terms of this Settlement Agreement and the Final Order and Judgment upon the Effective Date, will be entitled to all procedural opportunities and protections described in this Settlement Agreement and provided by the Court, and to all compensation and benefits for which they qualify under its terms, and will be barred permanently and forever from commencing, filing, initiating, prosecuting, asserting, and/or maintaining any and all Released Claims against any Released Parties in any court of law or equity, arbitration tribunal, or administrative or other forum.

(c) Prior to the Final Approval Date, any Retired NFL Football Player, Representative Claimant, or Derivative Claimant may seek to revoke his or her Opt Out from the Settlement Class and thereby receive the benefits of this Class Action Settlement by submitting a written request to Co-Lead Class Counsel and Counsel for the NFL Parties stating “I wish to revoke my request to be excluded from the Settlement

Class” (or substantially similar clear and unambiguous language), and also containing the Settlement Class Member’s printed name, address, phone number, and date of birth. The written request to revoke an Opt Out must contain the Personal Signature of the Settlement Class Member seeking to revoke his or her Opt Out.

Section 14.3 Objections

(a) Provided a Settlement Class Member has not submitted a written request to Opt Out, as set forth in Section 14.2(a), the Settlement Class Member may present written objections, if any, explaining why he or she believes the Class Action Settlement should not be approved by the Court as fair, reasonable, and adequate. No later than such date as is ordered by the Court, a Settlement Class Member who wishes to object to any aspect of the Class Action Settlement must file with the Court , or as the Court otherwise may direct, a written statement of the objection(s). The written statement of objection(s) must include a detailed statement of the Settlement Class Member’s objection(s), as well as the specific reasons, if any, for each such objection, including any evidence and legal authority the Settlement Class Member wishes to bring to the Court’s attention. That written statement also will contain the Settlement Class Member’s printed name, address, telephone number, and date of birth, written evidence establishing that the objector is a Settlement Class Member, and any other supporting papers, materials, or briefs the Settlement Class Member wishes the Court to consider when reviewing the objection. A written objection may not be signed using any form of electronic signature, but must contain the dated Personal Signature of the Retired NFL Football Player, Representative Claimant, or Derivative Claimant making the objection. The Court shall determine whether any Settlement Class Members who do not follow the procedures will have waived any objections they may have.

(b) A Settlement Class Member may object on his or her own behalf or through an attorney hired at that Settlement Class Member’s own expense, provided the Settlement Class Member has not submitted a written request to Opt Out, as set forth in Section 14.2(a). Attorneys asserting objections on behalf of Settlement Class Members must: (i) file a notice of appearance with the Court by the date set forth in the Preliminary Approval and Class Certification Order, or as the Court otherwise may direct; (ii) file a sworn declaration attesting to his or her representation of each Settlement Class Member on whose behalf the objection is being filed or a copy of the contract (to be filed *in camera*) between that attorney and each such Settlement Class Member; and (iii) comply with the procedures described in this Section.

(c) A Settlement Class Member (or counsel individually representing him or her, if any) seeking to make an appearance at the Fairness Hearing must file with the Court, by the date set forth in the Preliminary Approval and Class Certification Order, or as the Court otherwise may direct, a written notice of his or her intention to appear at the Fairness Hearing, in accordance with the requirements set forth in the Preliminary Approval and Class Certification Order.

Counsel or Counsel for the NFL Parties reasonably and in good faith determines is material, including, without limitation, the Releases or the definition of the Settlement Class, or (ii) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the proposed Preliminary Approval and Class Certification Order or the proposed Final Order and Judgment (Exhibit 4) that Class Counsel or Counsel for the NFL Parties reasonably and in good faith believes is material. Such written election to terminate this Settlement Agreement must be made to the Court within thirty (30) days of such Court order.

(b) Class Counsel may not terminate and render null and void this Class Action Settlement and Settlement Agreement on the basis of the attorneys' fees award ordered, or modified, by the Court or any appellate court(s), as set forth in ARTICLE XXI.

Section 16.3 Post-Termination Actions

(a) In the event this Settlement Agreement is terminated or becomes null and void, this Settlement Agreement will not be offered into evidence or used in this or in any other action in the Court, or in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum for any purpose, including, but not limited to, the existence, certification, or maintenance of any purported class. In addition, in such event, this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection with this Settlement Agreement will be without prejudice to all Parties and will not be admissible into evidence and will not be deemed or construed to be an admission or concession by any of the Parties of any fact, matter, or proposition of law and will not be used in any manner for any purpose, and all Parties will stand in the same position as if this Settlement Agreement had not been negotiated, made, or filed with the Court.

(b) In the event this Settlement Agreement is terminated or becomes null and void, the Parties will jointly move the Court to vacate the Preliminary Approval and Certification Order and any other orders certifying a Settlement Class provided.

(c) If this Settlement Agreement is terminated or becomes null and void after notice has been given, the Parties will provide Court-approved notice of termination to the Settlement Class. If a Party terminates the Settlement Agreement in accordance with Section 16.1 or Section 16.2, that Party will pay the cost of notice of termination.

(d) In the event this Settlement Agreement is terminated or becomes null and void, any unspent and uncommitted monies in the Funds will revert to the NFL Parties within ten (10) days, and all data provided by the NFL Parties, Class Counsel and/or Settlement Class Members shall be returned or destroyed.

ARTICLE XVII

Treatment of Confidential Information

Section 17.1 Confidentiality of Information Relating to the Settlement Agreement. The Parties will treat all confidential or proprietary information shared hereunder, or in connection herewith, either prior to, on or after the Settlement Date, and any and all prior or subsequent drafts, representations, negotiations, conversations, correspondence, understandings, analyses, proposals, term sheets, and letters, whether oral or written, of any kind or nature, with respect to the subject matter hereof (“Confidential Information”) in conformity with strict confidence and will not disclose Confidential Information to any non-Party without the prior written consent of the Party that shared the Confidential Information, except: (i) as required by applicable law, regulation, or by order or request of a court of competent jurisdiction, regulator, or self-regulatory organization (including subpoena or document request), provided that the Party that shared the Confidential Information is given prompt written notice thereof and, to the extent practicable, an opportunity to seek a protective order or other confidential treatment thereof, provided further that the Party subject to such requirement or request cooperates fully with the Party that shared the Confidential Information in connection therewith, and only such Confidential Information is disclosed as is legally required to be disclosed in the opinion of legal counsel for the disclosing Party; (ii) under legal (including contractual) or ethical obligations of confidentiality, on an as-needed and confidential basis to such Party’s present and future accountants, counsel, insurers, or reinsurers; or (iii) with regard to any information that is already publicly known through no fault of such Party or its Affiliates. This Settlement Agreement, all exhibits hereto, any other documents filed in connection with the Class Action Settlement, and any information disclosed through a public court proceeding shall not be deemed Confidential Information.

Section 17.2 Confidentiality of Retired NFL Football Player Information

(a) All information relating to a Retired NFL Football Player that is disclosed to or obtained by the Special Master, BAP Administrator, Claims Administrator, Lien Resolution Administrator, designated Qualified BAP Providers, the NFL Parties, an Appeals Advisory Panel member, an Appeals Advisory Panel Consultant, or the Court, may be used only by the Special Master, BAP Administrator, Claims Administrator, Lien Resolution Administrator, designated Qualified BAP Providers, the NFL Parties, an Appeals Advisory Panel member, an Appeals Advisory Panel Consultant, or the Court for the administration of this Class Action Settlement according to the Settlement Agreement terms and conditions. All such information relating to a Retired NFL Football Player will be treated as Confidential Information hereunder, will be subject to the terms of Section 17.1 hereof, and, where applicable, will be treated as Protected Health Information subject to HIPAA and other applicable privacy laws.

ARTICLE XVIII

Releases and Covenant Not to Sue

Section 18.1 Releases

(a) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Settlement Class, the Class and Subclass Representatives, and each Settlement Class Member, on his or her own behalf and on behalf of his or her respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, heirs, next of kin, estates, beneficiaries, executors, administrators, and any natural, legal, or juridical person or entity to the extent he, she, or it is entitled to assert any claim on behalf of any Settlement Class Member (the “Releasors”), hereby waive and release, forever discharge and hold harmless the Released Parties, and each of them, of and from any and all past, present and future claims, counterclaims, actions, rights or causes of action, liabilities, suits, demands, damages, losses, payments, judgments, debts, dues, sums of money, costs and expenses (including, without limitation, attorneys’ fees and costs), accounts, reckonings, bills, covenants, contracts, controversies, agreements, obligations, or promises, in law or in equity, contingent or non-contingent, known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, in any forum that the Releasors, and each of them, had, has, or may have in the future arising out of, in any way relating to or in connection with the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, referred to or relating to the Class Action Complaint and/or Related Lawsuits (“Claims”), including, without limitation, Claims:

(i) that were, are or could have been asserted in the Class Action Complaint or any other Related Lawsuit; and/or

(ii) arising out of, or relating to, head, brain and/or cognitive injury, as well as any injuries arising out of, or relating to, concussions and/or subconcussive events (including, without limitation, prevention, diagnosis and treatment thereof) of whatever cause and its damages (whether short-term, long-term or death), whenever arising, including, without limitation, Claims for personal or bodily injury, including disease, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life (and exacerbation and/or progression of personal or bodily injury), or wrongful death and/or survival actions as a result of such injury and/or exacerbation and/or progression thereof; and/or

(iii) arising out of, or relating to, neurocognitive deficits or impairment, or cognitive disorders, of whatever kind or degree, including, without limitation, mild cognitive impairment, moderate cognitive impairment, dementia, Alzheimer’s Disease, Parkinson’s Disease, and ALS; and/or

(iv) arising out of, or relating to, CTE; and/or

(v) arising out of, or relating to, loss of support, services, consortium, companionship, society, or affection, or damage to familial relations (including disease, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life); and/or

(vi) arising out of, or relating to, increased risk, possibility, or fear of suffering in the future from any head, brain and/or cognitive injury, as well as any injuries arising out of, or relating to, concussions and/or subconcussive events (including, without limitation, prevention, diagnosis and treatment thereof), and including disease, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life); and/or

(vii) arising out of, or relating to, medical screening and medical monitoring for undeveloped, unmanifested, and/or undiagnosed head, brain and/or cognitive injury, as well as any injuries arising out of, or relating to, concussions and/or subconcussive events (including, without limitation, prevention, diagnosis and treatment thereof); and/or

(viii) premised on any purported or alleged breach of any Collective Bargaining Agreement related to the issues in the Class Action Complaint and/or Related Lawsuits, except claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits.

(b) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Releasors do hereby release, forever discharge and hold harmless the Released Parties from any and all Claims, including unknown Claims, arising from, relating to, or resulting from the reporting, transmittal of information, or communications between or among the NFL Parties, Counsel for the NFL Parties, the Special Master, Claims Administrator, Lien Resolution Administrator, any Governmental Payor, and/or Medicare Part C or Part D Program sponsor regarding any claim for benefits under this Settlement Agreement, including any consequences in the event that this Settlement Agreement impacts, limits, or precludes any Settlement Class Member's right to benefits under Social Security or from any Governmental Payor or Medicare Part C or Part D Program sponsor.

(c) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Releasors do hereby release, forever discharge and hold harmless the Released Parties from any and all Claims, including unknown Claims, pursuant to the MSP Laws, or other similar causes of action, arising from, relating to, or resulting from the failure or alleged failure of any of the Released Parties to provide for a primary payment or appropriate reimbursement to a Governmental Payor or Medicare Part C or Part D Program sponsor with a Lien in connection with claims for medical items, services, and/or prescription drugs provided in connection with compensation or benefits claimed or received by a Settlement Class Member pursuant to this Settlement Agreement.

(d) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Releasors do hereby release, forever discharge and hold harmless the Released Parties, the Special Master, BAP Administrator, Claims Administrator, and their respective officers, directors, and employees from any and all Claims, including unknown Claims, arising from, relating to, or resulting from their participation, if any, in the BAP, including, but not limited to, Claims for negligence, medical malpractice, wrongful or delayed diagnosis, personal injury, bodily injury (including disease, trauma, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life), or death arising from, relating to, or resulting from such participation.

Section 18.2 Release of Unknown Claims. In connection with the releases in Section 18.1, the Class and Subclass Representatives, all Settlement Class Members, and the Settlement Class acknowledge that they are aware that they may hereafter discover Claims now unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to actions or matters released herein. Class and Subclass Representatives, all Settlement Class Members, and the Settlement Class explicitly took unknown or unsuspected claims into account in entering into the Settlement Agreement and it is the intention of the Parties fully, finally and forever to settle and release all Claims as provided in Section 18.1 with respect to all such matters.

Section 18.3 Scope of Releases

(a) Each Party acknowledges that it has been informed of Section 1542 of the Civil Code of the State of California (and similar statutes) by its counsel and that it does hereby expressly waive and relinquish all rights and benefits, if any, which it, he or she has or may have under said section (and similar sections) which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

(b) The Parties acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common law of any other state, territory, or other jurisdiction was separately bargained for and that the Parties would not have entered into this Settlement Agreement unless it included a broad release of unknown claims relating to the matters released herein.

(c) The Releasors intend to be legally bound by the Releases.

(d) The Releases are not intended to prevent the NFL Parties from exercising their rights of contribution, subrogation, or indemnity under any law.

(e) Nothing in the Releases will preclude any action to enforce the terms of this Settlement Agreement in the Court.

(f) The Parties represent and warrant that no promise or inducement has been offered or made for the Releases contained in this Article except as set forth in this Settlement Agreement and that the Releases are executed without reliance on any statements or any representations not contained in this Settlement Agreement.

Section 18.4 Covenant Not to Sue. From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, the Class and Subclass Representatives, each Settlement Class Member, and the Settlement Class, on behalf of the Releasors, and each of them, covenant, promise, and agree that they will not, at any time, continue to prosecute, commence, file, initiate, institute, cause to be instituted, assist in instituting, or permit to be instituted on their, his, her, or its behalf, or on behalf of any other individual or entity, any proceeding: (a) alleging or asserting any of his or her respective Released Claims against the Released Parties in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, including, without limitation, the Claims set forth in Section 18.1; or (b) challenging the validity of the Releases. To the extent any such proceeding exists in any court, tribunal or other forum as of the Effective Date, the Releasors covenant, promise and agree to withdraw, and seek a dismissal with prejudice of, such proceeding forthwith.

Section 18.5 No Release for Insurance Coverage.

(a) Notwithstanding anything herein to the contrary, this Settlement Agreement is not intended to and does not release any Governmental Payor or Medicare Part C or Part D Program sponsor from its or their obligation to provide any health insurance coverage, major medical insurance coverage, or disability insurance coverage to a Settlement Class Member, or from any claims, demands, rights, or causes of action of any kind that a Settlement Class Member has or hereafter may have with respect to such individuals or entities.

(b) Notwithstanding anything herein to the contrary, this Settlement Agreement is not intended to and does not effect a release of any rights or obligations that any insurer has under or in relation to any contract or policy of insurance to any named insured, insured, additional insured, or other insured person or entity thereunder, including those persons or entities referred to in Section 2.1(bbb)(i)-(ii).

Section 18.6 No Release for Claims for Workers' Compensation and NFL CBA Medical and Disability Benefits. Nothing contained in this Settlement Agreement, including the Release and Covenant Not to Sue provisions in this ARTICLE XVIII, affects the rights of Settlement Class Members to pursue claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits. For the avoidance of any doubt, this Settlement Agreement does not alter the

showing that Settlement Class Members must demonstrate to pursue successful claims for workers' compensation and/or successful claims alleging entitlement to NFL CBA Medical and Disability Benefits, nor does it alter the defenses to such claims available to Released Parties except as set forth in ARTICLE XXIX.

ARTICLE XIX

Bar Order

Section 19.1 Bar Order. As a condition to the Settlement, the Parties agree to move the Court for a bar order, as part of the Final Order and Judgment (substantially in the form of Exhibit 4), as set forth in Section 20.1.

Section 19.2 Judgment Reduction. With respect to any litigation by the Releasors against Riddell, the Releasors further agree that if a verdict in their favor results in a verdict or judgment for contribution or indemnity against the Released Parties, the Releasors will not enforce their right to collect this verdict or judgment to the extent that such enforcement creates liability against the Released Parties. In such event, the Releasors agree that they will reduce their claim or agree to a judgment reduction or satisfy the verdict or judgment to the extent necessary to eliminate the claim of liability against the Released Parties or any Other Party claiming contribution or indemnity.

ARTICLE XX

Final Order and Judgment and Dismissal With Prejudice

Section 20.1 The Parties will jointly seek a Final Order and Judgment from the Court, substantially in the form of Exhibit 4, approval and entry of which shall be a condition of this Settlement Agreement, that:

- (a) Approves the Class Action Settlement in its entirety pursuant to Fed. R. Civ. P. 23(e) as fair, reasonable, and adequate;
- (b) Finds that this Settlement Agreement, with respect to each Subclass, is fair, reasonable, and adequate;
- (c) Confirms the certification of the Settlement Class for settlement purposes only;
- (d) Confirms the appointments of the Class and Subclass Representatives;
- (e) Confirms the appointments of Co-Lead Class Counsel, Class Counsel and Subclass Counsel;
- (f) Finds that the Settlement Class Notice satisfied the requirements set forth in Fed. R. Civ. P. 23(c)(2)(B);

(g) Permanently bars, enjoins and restrains the Releasors (and each of them) from commencing, filing, initiating, prosecuting, asserting, and/or maintaining any and all Released Claims against any Released Party;

(h) Dismisses with prejudice the Class Action Complaint, without further costs, including claims for interest, penalties, costs and attorneys' fees, except that the motion for an award of attorneys' fees and reasonable costs, as set forth in in Section 21.1, will be made at an appropriate time to be determined by the Court;

(i) Orders the dismissal with prejudice, and without further costs, including claims for interest, penalties, costs, and attorneys' fees, of all Related Lawsuits pending in the Court as to the Released Parties, thereby effectuating in part the Releases;

(j) Orders all Releasors with Related Lawsuits pending in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, other than the Court, promptly to dismiss with prejudice, and without further costs, including claims for interest, penalties, costs, and attorneys' fees, all such Related Lawsuits as to the Released Parties, thereby effectuating in part the Releases;

(k) Permanently bars and enjoins the commencement, assertion, and/or prosecution of any claim for contribution and/or indemnity in the Court, in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum between the Released Parties and all alleged joint tortfeasors, other than Riddell, together with an appropriate judgment reduction provision;

(l) Confirms the appointment of the Special Master, Garretson Group as the BAP Administrator, BrownGreer as the Claims Administrator, Garretson Group as the Liens Resolution Administrator, and Citibank, N.A. as the Trustee, and confirms that the Court retains continuing jurisdiction over those appointed;

(m) Confirms that the Court retains continuing jurisdiction over the "qualified settlement funds," as defined under §1.468B-1 of the Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986, as amended, created under the Settlement Agreement; and

(n) Expressly incorporates the terms of this Settlement Agreement and provides that the Court retains continuing and exclusive jurisdiction over the Parties, the Settlement Class Members and this Settlement Agreement, to interpret, implement, administer and enforce the Settlement Agreement in accordance with its terms.

ARTICLE XXI

Attorneys' Fees

Section 21.1 Award. Separately and in addition to the NFL Parties' payment of the monies set forth in ARTICLE XXIII and any consideration received by Settlement Class Members under this Settlement, the NFL Parties shall pay class

attorneys' fees and reasonable costs. Class Counsel shall be entitled, at an appropriate time to be determined by the Court, to petition the Court on behalf of all entitled attorneys for an award of class attorneys' fees and reasonable costs. Provided that said petition does not seek an award of class attorneys' fees and reasonable costs exceeding One Hundred and Twelve Million, Five Hundred Thousand United States dollars (U.S. \$112,500,000), the NFL Parties agree not to oppose or object to the petition. Ultimately, the award of class attorneys' fees and reasonable costs to be paid by the NFL Parties is subject to the approval of the Court. For the avoidance of any doubt, the NFL Parties' obligation to pay class attorneys' fees and reasonable costs is limited to those attorneys' fees and reasonable costs ordered by the Court as a result of the initial petition by Class Counsel. The NFL Parties shall not be responsible for the payment of any further attorneys' fees and/or costs for the term of this Agreement. After the Effective Date, Co-Lead Class Counsel may petition the Court to set aside up to five percent (5%) of each Monetary Award and Derivative Claimant Award to facilitate the Settlement program and related efforts of Class Counsel. These set-aside monies shall be held in a separate fund overseen by the Court. Any future petition for a set-aside will describe: (i) the proposed amount; (ii) how the money will be used; and (iii) any other relevant information (for example, the assurance that any "set-aside" from a Monetary Award or Derivative Claimant Award for a Settlement Class Member represented by his/her individual counsel will reduce the attorney's fee payable to that counsel by the amount of the "set-aside"). No money will be held back or set aside from any Monetary Award or Derivative Claimant Award without Court approval. The NFL Parties believe that any such proposed set aside application is a matter strictly between and among Settlement Class Members, Class Counsel, and individual counsel for Settlement Class Members. The NFL Parties therefore take no position on the proposed set aside and will take no position on the proposed set aside in the event such an application is made.

Section 21.2 Payment. No later than sixty (60) days after the Effective Date, the NFL Parties will pay, or cause to be paid, a total of One Hundred and Twelve Million, Five Hundred Thousand United States dollars (U.S. \$112,500,000) into the Attorneys' Fees Qualified Settlement Fund, as set forth in Section 23.7, to be held in escrow until such payment shall be made as directed by the Court.

ARTICLE XXII

Enforceability of Settlement Agreement and Dismissal of Claims

Section 22.1 It is a condition of this Settlement Agreement that the Court approve and enter the Preliminary Approval and Class Certification Order and Final Order and Judgment substantially in the form of Exhibit 4.

Section 22.2 The Parties agree that this Class Action Settlement is not final and enforceable until the Effective Date, except that upon entry of the Preliminary Approval and Class Certification Order, the NFL Parties will be obligated to make the Settlement Class Notice Payment as set forth in Sections 14.1, 23.1 and 23.3.

Section 22.3 From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, the Court will

dismiss with prejudice all Released Claims by any and all Releasors against any and all Released Parties pending in the Court, and any and all Releasors with Related Lawsuits pending in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, other than the Court, will dismiss with prejudice the Related Lawsuits as to the Released Parties, including any related appeals.

Section 22.4 From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, the Parties agree that each and every Releasor will be permanently barred and enjoined from commencing, filing, initiating, instituting, prosecuting, and/or maintaining any judicial, arbitral, or regulatory action against any Released Party with respect to any and all Released Claims.

Section 22.5 From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, this Settlement Agreement will be the exclusive remedy for any and all Released Claims by or on behalf of any and all Releasors against any and all Released Parties, and no Releasor will recover, directly or indirectly, any sums from any Released Parties for Released Claims other than those received for the Released Claims under the terms of this Settlement Agreement, if any.

Section 22.6 From and after the Effective Date, if any Releasor, in violation of Section 18.4, commences, files, initiates, or institutes any new action or other proceeding for any Released Claims against any Released Parties, or continues to prosecute any pending claims, or challenges the validity of the Releases, in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, such action or other proceeding will be dismissed with prejudice and at such Releasor's cost; provided, however, before any costs may be assessed, counsel for such Releasor or, if not represented, such Releasor, will be given reasonable notice and an opportunity voluntarily to dismiss such new action or proceeding with prejudice. Furthermore, if the NFL Parties or any other Released Party brings any legal action before the Court to enforce its rights under this Settlement Agreement against a Settlement Class Member and prevails in such action, that Released Party will be entitled to recover any and all related costs and expenses (including attorneys' fees) from any Releasor found to be in violation or breach of his or her obligations under this Article.

ARTICLE XXIII NFL Payment Obligations

Section 23.1 Funding Amount. In consideration of the Releases and Covenant Not to Sue set forth in ARTICLE XVIII, and the dismissal with prejudice of the Class Action Complaint and the Related Lawsuits, and subject to the terms and conditions of this Settlement Agreement, the NFL Parties will pay in accordance with the funding terms set forth herein:

(a) Monetary Award Fund Amount. The amount of money sufficient to make all payments set forth in Section 23.3(b) for sixty-five (65) years from the Effective Date. For the avoidance of any doubt, the NFL Parties shall have no

payment obligations under this Settlement Agreement after the end of the Monetary Award Fund sixty-five (65) year term;

(b) BAP Fund Amount. The amount of money, up to a maximum of Seventy-Five Million United States dollars (U.S. \$75,000,000), sufficient to make all payments set forth in Section 23.3(d), except that every qualified Retired NFL Football Player, as set forth in Section 5.1, is entitled to one baseline assessment examination. For the avoidance of any doubt, if the Seventy-Five Million United States dollars (U.S. \$75,000,000) is insufficient to cover the costs of one baseline assessment examination for every qualified Retired NFL Football Player electing to receive an examination by the deadline set forth in Section 5.3, the NFL Parties agree to pay the amount of money necessary to provide the examinations in accordance with this Settlement Agreement;

(c) Education Fund Amount. Ten Million United States dollars (U.S. \$10,000,000), which monies will be used exclusively to fund the Education Fund;

(d) Settlement Class Notice Amount. Four Million United States dollars (U.S. \$4,000,000), to pay for Settlement Class Notice and related expenses; and

(e) Annual Compensation of the Special Master. The annual compensation of the Special Master appointed by the Court, whose total annual compensation shall not exceed Two Hundred Thousand United States dollars (U.S. \$200,000).

(f) Notwithstanding any provision of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, or any subsequent legislation mandating or subsidizing health insurance coverage, the NFL Parties will pay, or cause to be paid, in full the amounts set forth above in Section 23.1(a)-(e), and will not bill any Governmental Payor or Medicare Part C or Part D Program for any such costs.

Section 23.2 Exclusive Payments. For the avoidance of any doubt, other than as set forth in Section 21.2, the NFL Parties will have no additional payment obligations in connection with this Settlement Agreement.

Section 23.3 Funding Terms. The NFL Parties' payment obligations will be funded as follows:

(a) Education Fund. No later than thirty (30) days after the Effective Date, the NFL Parties will pay, or cause to be paid, a total of Ten Million United States dollars (U.S. \$10,000,000) into the Settlement Trust Account, as set forth in Section 23.5, for transfer by the Trustee into the Education Fund.

(b) Monetary Award Fund. The NFL Parties will pay, or cause to be paid six initial monthly installments of Twenty Million United States dollars (U.S. \$20,000,000) each, into the Settlement Trust Account for transfer by the Trustee into the Monetary Award Fund, beginning no later than thirty (30) days after the Effective Date. If additional funds are necessary in any given month during this six month period, they shall be requested and paid in accordance with the procedures set forth in section 23.3(b)(i)-(iv). The Claims Administrator shall provide in writing to the NFL Parties and Co-Lead Class Counsel a monthly report for this initial six month period that includes an accounting of the items set forth in Section 23.3(b)(i)(1)-(5).

(i) Beginning no later than thirty (30) days after the Effective Date, on or before the 10th day of each month, the Claims Administrator shall provide in writing to the NFL Parties and Co-Lead Class Counsel a monthly funding request identifying the monetary amount necessary to pay all final and accrued Monetary Awards, Derivative Claimant Awards and the costs and expenses paid out of the Monetary Award Fund, as set forth in Section 23.5(d)(ii), and any additional amount necessary to maintain the Monetary Award Fund targeted reserve, as set forth in Section 23.3(b)(v), after all final and accrued Monetary Awards, Derivative Claimant Awards and costs and expenses are paid. This monthly funding request shall provide, in addition to the total monetary amount requested, an accounting of:

(1) The name of each Settlement Class Member with a final and accrued Monetary Awards or Derivative Claimant Award since the last monthly funding request, identification of his/her counsel, identification of the Award as a Monetary Award or Derivative Claimant Award, the Award amount, and identification of any “holdback” amount deducted from the Award as set forth in Sections 9.1(c)(ii) and 9.2(b)(ii), 11.3(g) and 11.3(h);

(2) The amount of costs and expenses related to the appeals process, as set forth in ARTICLE IX, since the last monthly funding request;

(3) The amount of costs and expenses of claims administration, as set forth in ARTICLE X, since the last monthly funding request;

(4) The amount of costs and expenses of the Lien identification and resolution process, as set forth in ARTICLE XI, since the last monthly funding request;

(5) The amount necessary to maintain the Monetary Award Fund targeted reserve, as set forth in Section 23.3(b)(v), after all final and accrued Monetary Awards, Derivative Claimant Awards, and costs and expenses are paid.

(ii) Subject to the objection process set forth in Section 23.3(b)(iii), the NFL Parties will pay, or cause to be paid, within thirty (30) days of receipt of the written monthly funding request, a payment of the total amount requested

into the Settlement Trust Account for transfer by the Trustee into the Monetary Award Fund.

(iii) Within ten (10) days after receipt of the written monthly funding request, the NFL Parties and Co-Lead Class Counsel shall each notify the Claims Administrator in writing of any objection to any aspect of the funding request. If an objection is timely made, the NFL Parties, will pay, or cause to be paid, within thirty (30) days of such written monthly funding request, a payment of the undisputed portion of the total amount requested into the Settlement Trust Account for transfer by the Trustee into the Monetary Award Fund. The NFL Parties, Co-Lead Class Counsel and the Claims Administrator shall use their best efforts to resolve any objections within fifteen (15) days after receipt of the written monthly funding request. If the NFL Parties, Co-Lead Class Counsel and the Claims Administrator are unable to resolve the objection within twenty (20) days after receipt of the written monthly funding request, the objecting party shall present the matter in writing to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof).

(1) After an agreement on the resolution of an objection, or a decision by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) resolving an objection by requiring the NFL Parties to pay, or cause to be paid, additional amounts beyond the undisputed portion of the monthly funding request, the NFL Parties will pay, or cause to be paid, the additional amounts beyond the undisputed portion of the monthly funding request within the longer of thirty (30) days of receiving the written monthly funding request or ten (10) days after resolution of the objection.

(iv) Within ten (10) days after transfer of funds into the Monetary Award Fund pursuant to a monthly funding request or decision of the Special Master or Court, as set forth in Section 23.3(b)(iii)(1), the Claims Administrator shall cause payment to be issued on all applicable final and accrued Monetary Awards, Derivative Claimant Awards and costs and expenses paid out of the Monetary Award Fund, as set forth in Section 23.5(d)(ii).

(v) The Monetary Award Fund shall maintain a targeted reserve, as set forth in Section 23.3(b)(v)(1), beyond the monetary amounts necessary to pay written monthly funding requests, which reserve may be used to pay any costs and expenses that must be satisfied pursuant to a contractual or other legal obligation before receipt of the monthly funding request amount and that are properly paid out of the Monetary Award Fund, as set forth in Section 23.5(d)(ii). The Claims Administrator shall report promptly any such payments from the Monetary Award Fund to the NFL Parties and Co-Lead Class Counsel. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the appropriateness of such payments, in which case the Court will determine (or may, in its discretion, refer the challenge to the Special Master to determine) the appropriateness of such payments. If the Court or Special Master, as applicable, determines that any such payment constituted willful misconduct, the Court or Special Master may, in its discretion, deduct that amount from the compensation of the Claims Administrator.

(1) The Monetary Award Fund shall maintain a targeted reserve of: (i) Ten Million United States dollars (U.S. \$10,000,000) during the first through tenth years of the Monetary Award Fund; (ii) Five Million United States dollars (U.S. \$5,000,000) during the eleventh through fiftieth years of the Monetary Award Fund; (iii) One Million United States dollars (\$1,000,000) during the fifty-first through sixtieth years of the Monetary Award Fund; and (iv) Two Hundred and Fifty Thousand United States dollars (U.S. \$250,000) during the sixty-first through sixty-fifth years of the Monetary Award Fund.

(c) During the eleventh, fifty-first, and sixty-first years of the Monetary Award Fund, monthly funding requests shall first be satisfied by the money constituting the balance in the Monetary Award Fund until the revised targeted reserve, as set forth in Section 23.3(b)(v)(1), is achieved. For example, in the eleventh year of the Monetary Award Fund, all monthly funding requests shall be paid from the Monetary Award Fund balance until the reserve is reduced to Five Million United States dollars (\$5,000,000). The process for the monthly funding request shall otherwise remain as set forth in Section 23.3(b).

(d) BAP Fund. No later than thirty (30) days after the Effective Date, the NFL Parties will pay, or cause to be paid, a total of Thirty-Five Million United States dollars (U.S. \$35,000,000) into the Settlement Trust Account for transfer by the Trustee into the BAP Fund. If at any point following the Effective Date until the expiration the five-year period for the provision of BAP Supplemental Benefits, as set forth in Sections 5.5 and 5.11, the balance of the BAP Fund falls below Ten Million United States dollars (U.S. \$10,000,000), the NFL Parties, upon written notice from the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), who shall act upon application of the BAP Administrator, will pay, or cause to be paid, within thirty (30) days of such written notice, additional payments into the Settlement Trust Account for transfer by the Trustee into the BAP Fund in order to maintain a balance of no less than Ten Million United States dollars (U.S. \$10,000,000), and no more than Eleven Million United States dollars (U.S. \$11,000,000). Under no circumstances will the aggregate transfers to the BAP Fund exceed Seventy-Five Million United States dollars (U.S. \$75,000,000) in total, except if necessary to provide every qualified Retired NFL Football Player with one baseline assessment examination as provided for in Sections 5.1 and 23.1(b). Any funds remaining in the BAP Fund at the conclusion of the five-year period for the provision of BAP Supplemental Benefits, as set forth in Sections 5.5 and 5.11, shall be transferred to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

(e) Class Notice Costs. No later than five (5) days after the date of the Preliminary Approval and Class Certification Order, the NFL Parties will pay, or cause to be paid, a total of Four Million United States dollars (U.S. \$4,000,000) to Co-Lead Class Counsel for the Settlement Class Notice and related expenses, as set forth in Section 14.1.

(f) Prepayment Right. The NFL Parties will have the right (but not the obligation) to prepay, or cause to be prepaid, any of their payment

obligations to the Funds under the Settlement Agreement. In connection with any such prepayment, the NFL Parties will designate in writing the payment obligation that is being prepaid and how such prepayment should affect the NFL Parties' remaining payment obligations (*i.e.*, whether the amount prepaid should be credited against the next payment obligation or to one or more subsequent payment obligations or a combination thereof).

Section 23.4 No Interest or Inflation Adjustment. For the avoidance of any doubt, the payments set forth in Section 23.1 will not be subject to any interest obligation or inflation adjustment.

Section 23.5 Settlement Trust

(a) Promptly following the Effective Date, Co-Lead Class Counsel and Counsel for the NFL Parties will file a motion seeking the creation of a Settlement Trust under Delaware law and the appointment of the Trustee. Co-Lead Class Counsel and Counsel for the NFL Parties will file a proposed Settlement Trust Agreement with the Court.

(b) Co-Lead Class Counsel and Counsel for the NFL Parties will jointly recommend Citibank, N.A. as the Trustee, subject to the approval of the Court. The Trustee may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, and granted by the Court. If the Trustee resigns, dies, is replaced, or is otherwise unable to continue employment in that position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed Trustee for appointment by the Court.

(c) Upon Court approval of the proposed Settlement Trust Agreement, Co-Lead Class Counsel, the NFL Parties, the Trustee and the Special Master, will execute the Settlement Trust Agreement approved by the Court, thereby creating the Settlement Trust. The Settlement Trust will be structured and operated in a manner so that it qualifies as a "qualified settlement fund" under §1.468B-1 of the Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986, as amended.

(d) The Settlement Trust will be composed of the Funds. The Trustee will establish the Settlement Trust Account, into which the NFL Parties will make payments as required by this Settlement Agreement. The Trustee will also establish three separate funds (the "Funds"), into which the Trustee will transfer funds at the direction of the Special Master (or the Claims Administrator after expiration of the term of the Special Master and extension(s) thereof) and pursuant to the terms of this Settlement Agreement and on which the Special Master (or the Claims Administrator after expiration of the term of the Special Master and any extension(s) thereof) will have signatory authority. These Funds will constitute a single qualified settlement fund:

(i) The BAP Fund, which will be used to make payments for the BAP, as set forth in ARTICLE V.

(ii) The Monetary Award Fund, which will be used to make payments for: (a) all Monetary Awards and Derivative Claimant Awards, as set forth in ARTICLE VI and ARTICLE VII; (b) certain costs and expenses of the appeals process, as set forth in ARTICLE IX; (c) costs and expenses of claims administration, as set forth in ARTICLE X; and (d) certain costs and expenses of the Lien identification and resolution process, as set forth in ARTICLE XI;

(iii) The Education Fund, which will be used exclusively to make payments to support education programs and initiatives, as set forth in ARTICLE XII; and

(iv) The Settlement Trust Account, which will be used solely to transfer funds into the Funds described above in Section 23.5(d)(i)-(iii).

(e) The Settlement Trust will be managed by the Trustee as provided in the Settlement Trust Agreement, and both the Settlement Trust and Trustee will be subject to the continuing jurisdiction and supervision of the Court. Each of the Funds will be maintained in separate bank accounts at one or more federally insured depository institutions approved by Co-Lead Class Counsel and Counsel for the NFL Parties. The Trustee will have the authority to make payments from the Settlement Trust Account into the other Funds at the direction of the Special Master (or the Claims Administrator after expiration of the term of the Special Master and any extension(s) thereof) and to make disbursements from the Funds at the direction of the Special Master (or the Claims Administrator at the direction of Co-Lead Class Counsel and Counsel for the NFL Parties, after expiration of the term of the Special Master and any extension(s) thereof), and consistent with the terms of this Settlement Agreement and the Settlement Trust Agreement.

(f) The Trustee will be responsible for making any necessary tax filings and payments of taxes, estimated taxes, and associated interest and penalties, if any, by the Settlement Trust and responding to any questions from, or audits regarding such taxes by, the Internal Revenue Service or any state or local tax authority. The Trustee also will be responsible for complying with all tax information reporting and withholding requirements with respect to payments made by the Settlement Trust, as well as paying any associated interest and penalties. Any such taxes, interest, and penalty payments will be paid by the Trustee from the Monetary Award Fund.

Section 23.6 Funds Investment

(a) To the extent funds are available for investment, amounts deposited in each of the Funds will be invested conservatively in a manner designed to assure timely availability of funds, protection of principal and avoidance of concentration risk.

(b) Any earnings attributable to the BAP Fund, the Monetary Award Fund, and/or the Education Fund will be retained in the respective Fund.

Section 23.7 Attorneys' Fees Qualified Settlement Fund. Unless the Court directs otherwise, a separate fund (intended to qualify as a "qualified settlement fund" under §1.468B-1 of the Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986, as amended) will be established out of which attorneys' fees will be paid pursuant to order of the Court, as set forth in ARTICLE XXI. This separate qualified settlement fund will be established pursuant to order of the Court, and will operate under Court supervision and control. This separate qualified settlement fund will be separate from the qualified settlement fund described in Section 23.5(c) and any of the Funds described therein, and will not be administered by the Trustee. The Court will determine the form and manner of administering this fund, in which the NFL Parties will have no reversionary interest.

Section 23.8 Trustee Satisfaction of Monetary Obligations. Wherever in this Settlement Agreement the Special Master, BAP Administrator, Claims Administrator, or Lien Resolution Administrator is authorized or directed, as the context may reflect, to pay, disburse, reimburse, hold, waive, or satisfy any monetary obligation provided for or recognized under any of the terms of this Settlement Agreement, the Special Master, BAP Administrator, Claims Administrator, or Lien Resolution Administrator may comply with such authorization or direction by directing the Trustee to, as appropriate, pay, disburse, reimburse, hold, waive, or satisfy any such monetary obligation.

ARTICLE XXIV

Denial of Wrongdoing, No Admission of Liability

Section 24.1 This Settlement Agreement, whether or not the Class Action Settlement becomes effective, is for settlement purposes only and is to be construed solely as a reflection of the Parties' desire to facilitate a resolution of the Class Action Complaint and of the Released Claims and Related Lawsuits. The NFL Parties expressly deny that they, or the other Released Parties, have violated any duty to, breached any obligation to, committed any fraud on, or otherwise engaged in any wrongdoing with respect to, the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member, or any Opt Out, and expressly deny the allegations asserted in the Class Action Complaint and Related Lawsuits, and deny any and all liability related thereto. Neither this Settlement Agreement nor any actions undertaken by the NFL Parties or the Released Parties in the negotiation, execution, or satisfaction of this Settlement Agreement will constitute, or be construed as, an admission of any liability or wrongdoing, or recognition of the validity of any claim made by the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member, or any Opt Out, in this or any other action or proceeding.

Section 24.2 In no event will the Settlement Agreement, whether or not the Class Action Settlement becomes effective, or any of its provisions, or any negotiations, statements, or court proceedings relating to its provisions, or any actions undertaken in this Settlement Agreement, in any way be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, of any kind, or used in any other fashion, by the Class and Subclass Representatives, the Settlement

Class, any Settlement Class Member, Class Counsel, or any of the Released Parties in any litigation, action, hearing, or any judicial, arbitral, administrative, regulatory or other proceeding for any purpose, except a proceeding to resolve a dispute arising under, or to enforce, the Settlement Agreement. Without limiting the foregoing, neither the Settlement Agreement nor any of its provisions, negotiations, statements, or court proceedings relating to its provisions, nor any actions undertaken in this Settlement Agreement, will be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, or as a waiver by the Released Parties of any applicable defense, or as a waiver by the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member of any claims, causes of action, or remedies. This Section 24.2 shall not apply to disputes between the NFL Parties and their insurers, as to which the NFL Parties reserve all rights.

ARTICLE XXV

Representations and Warranties

Section 25.1 Authority. Class Counsel represent and warrant as of the date of the Settlement Agreement, as amended, that they have authority to enter into this Settlement Agreement on behalf of the Class and Subclass Representatives.

Section 25.2 Class and Subclass Representatives. Each of the Class and Subclass Representatives, through a duly authorized representative, represents and warrants that he: (i) has agreed to serve as a representative of the Settlement Class proposed to be certified herein; (ii) is willing, able, and ready to perform all of the duties and obligations as a representative of the Settlement Class; (iii) is familiar with the pleadings in In re: National Football League Players' Concussion Injury Litigation, MDL 2323, or has had the contents of such pleadings described to him; (iv) is familiar with the terms of this Settlement Agreement, including the exhibits attached to this Settlement Agreement, or has received a description of the Settlement Agreement, including the exhibits attached to this Settlement Agreement, from Class Counsel, and has agreed to its terms; (v) has consulted with, and received legal advice from, Class Counsel about the litigation, this Settlement Agreement (including the advisability of entering into this Settlement Agreement and its Releases and the legal effects of this Settlement Agreement and its Releases), and the obligations of a representative of the Settlement Class; (vi) has authorized Class Counsel to execute this Settlement Agreement on his behalf; and (vii) will remain in and not request exclusion from the Settlement Class and will serve as a representative of the Settlement Class until the terms of this Settlement Agreement are effectuated, this Settlement Agreement is terminated in accordance with its terms, or the Court at any time determines that such Class or Subclass Representative cannot represent the Settlement Class.

Section 25.3 NFL Parties. The NFL Parties represent and warrant as of the date of the Settlement Agreement, as amended, that: (i) they have all requisite corporate power and authority to execute, deliver, and perform this Settlement Agreement; (ii) the execution, delivery, and performance by the NFL Parties of this

Settlement Agreement has been duly authorized by all necessary corporate action; (iii) this Settlement Agreement has been duly and validly executed and delivered by the NFL Parties; and (iv) this Settlement Agreement constitutes their legal, valid, and binding obligation.

Section 25.4 NFL Parties' Representation and Warranty Regarding Member Clubs. The NFL Parties represent and warrant as of the date of the Settlement Agreement, as amended, that the current Member Clubs have duly authorized the execution, delivery, and performance by the NFL Parties of this Settlement Agreement.

Section 25.5 Investigation and Future Events. The Parties and their counsel represent and warrant that they have each performed an independent investigation of the allegations of fact and law made in connection with the Class Action Complaint in In re: National Football League Players' Concussion Injury Litigation, MDL No. 2323, and may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of this Settlement Agreement. Nevertheless, the Parties intend to resolve their disputes pursuant to the terms of this Settlement Agreement and thus, in furtherance of their intentions, this Settlement Agreement will remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Settlement Agreement will not be subject to rescission or modification by reason of any change or difference in facts or law.

Section 25.6 Security

(a) The NFL Parties represent and warrant that the NFL currently maintains, and will continue to maintain, an investment grade rating on its Stadium Program Bonds, as rated by Fitch Ratings. This investment grade rating shall serve as security that the NFL Parties will meet their payment obligations as set forth in Section 23.3 for the first ten years of the Settlement following the Effective Date.

(b) If the identity of the rating agency that rates the NFL's Stadium Program Bonds changes during the first ten years of the Settlement from the Effective Date, then an investment grade rating by the new rating agency on the NFL's Stadium Program Bonds will satisfy the NFL Parties' obligations under Section 25.6(a).

(c) The applicable definition of "investment grade" will be as provided by the rating agency rating the NFL's Stadium Program Bonds.

(d) No later than the tenth anniversary of the Effective Date (the "Tenth Anniversary Date"), the NFL Parties shall establish, or cause to be established, a special-purpose Delaware statutory trust (the "Statutory Trust"), with an independent trustee, that will be funded and managed as follows: the NFL Parties shall contribute cash to the Statutory Trust so that as of the Tenth Anniversary Date, it shall contain funds that, in the reasonable belief of the NFL Parties, and after taking into account reasonably expected investment returns over time, will be sufficient to satisfy the NFL Parties' remaining anticipated payment obligations, as set forth in Section

23.5(d)(ii), as they come due. In the event that the remaining anticipated payment obligations on the Tenth Anniversary Date materially exceed the NFL Parties' reasonable expectations as of the Effective Date due to participation rates and/or the claims experience during the first ten years of the Settlement, the NFL Parties may apply to the Court to fund the Statutory Trust as follows: seventy percent of the required funds to be contributed by the NFL Parties to the Statutory Trust by the Tenth Anniversary Date and the remaining thirty percent of the required funds to be contributed on a three-year schedule set by the Court so that all required funds are deposited in the Statutory Trust no later than the thirteenth anniversary of the Effective Date. The NFL Parties shall not have the right to pledge or assign the property of the Statutory Trust (including any investment returns earned thereon and remaining in the Statutory Trust, as provided herein) to any third-party, and, as contemplated by §3805(b) of Title 12 of the Delaware Code, no other creditor of any of the NFL Parties shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the Statutory Trust. The documents governing the Statutory Trust will provide that the NFL Parties may direct how the funds in the Statutory Trust are invested from time to time, but the Trustee will be instructed to permit withdrawals of funds from the Statutory Trust only for the limited purposes of: (i) satisfying the NFL Parties' payment obligations under this Settlement Agreement as set forth in Section 23.5(d)(ii); (ii) the NFL Parties' costs and expenses related to the Statutory Trust, including, without limitation, taxes, investment-related expenses and administrative costs; (iii) the return of excess monies in the Statutory Trust to the NFL Parties based on attaining investment returns exceeding the amount necessary to satisfy the NFL Parties' remaining anticipated payment obligations, but only upon Court approval; (iv) the return of excess monies in the Statutory Trust to the NFL Parties based on reductions to the NFL Parties' remaining anticipated payment obligations, but only upon Court approval; or (v) upon the completion of the NFL Parties' payment obligations, as set forth in this Settlement Agreement, but only upon Court approval. To the extent that Court approval is required for the withdrawal of funds from the Statutory Trust, such approval shall be granted unless there has been either a material default on the NFL Parties' payment obligations within the prior thirty (30) days, or upon a showing, by clear and convincing evidence, that the proposed withdrawal would materially impair the Settlement Agreement.

(e) In the event of a material default by the NFL Parties in satisfying their payment obligations as set forth in this Settlement Agreement, and the NFL Parties' failure to cure any such material default within sixty (60) days of written notification of such default by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel shall have the right to petition the Court to make a finding that there has been a material, uncured default in satisfying the NFL Parties' payment obligations and to enter an order directing the NFL Parties to meet their payment obligations. Beginning on the Tenth Anniversary Date, any such petition by Co-Lead Class Counsel may request that the Court direct the NFL Parties to meet their payment obligations with the funds available in the Statutory Trust established by the NFL Parties pursuant to Section 25.6(d).

(f) The NFL Parties historically have maintained liability insurance policies under which they are seeking coverage and are pursuing their rights to

recover under said policies. It is understood that if the NFL Parties secure funding commitments from one or more insurers under their historical policies, or a court order obligating one or more such insurers to fund in whole or in part certain of the NFL Parties' obligations under this Settlement Agreement, after such insurance funding is deposited into the Statutory Trust, the NFL Parties may seek Court approval to reduce, dollar-for-dollar, the equivalent amount of such funding for anticipated remaining liabilities that otherwise would be required to be deposited in the Statutory Trust by the NFL Parties pursuant to Section 25.6(d). In addition, if the NFL Parties obtain additional insurance policies from one or more third-party insurers with a rating of A or above, to insure in whole or in part certain of their obligations under the Settlement, the NFL Parties may seek Court approval to reduce, dollar-for-dollar, the equivalent amount of funding for anticipated remaining liabilities that otherwise would be required to be deposited in the Statutory Trust by the NFL Parties pursuant to Section 25.6(d). To do so, the NFL Parties must demonstrate to the Court that the Court or the Statutory Trust provided for in Section 25.6(d) will have sufficient control over such insurance policies and their proceeds to ensure that the proceeds are available to meet the NFL Parties' payment obligations, if necessary.

(g) In the event the Court enters an order pursuant to Section 25.6(e) directing the NFL Parties to meet their payment obligations pursuant to Section 23.3 and the NFL Parties fail materially to comply with such Order, as set forth in Section 25.6(e), Co-Lead Class Counsel may request that the Court provide the NFL Parties sixty (60) days to show cause why the Court shall not render null and void the Releases and Covenants Not to Sue provided to Released Parties, as set forth in Section 18.1, by Settlement Class Members who: (i) have received a final, favorable Notice of Registration Determination, as set forth in Section 4.3, and have not received a final and accrued Monetary Award or final and accrued Derivative Claimant Award as of the date of such application; or (ii) who have only received a final and accrued Monetary Award for a Level 1.5 Neurocognitive Impairment or a final and accrued Derivative Claimant Award for a Level 1.5 Neurocognitive Impairment as of the date of such application. For the avoidance of any doubt, all other Releases and Covenants Not to Sue shall remain effective. In the event that a Settlement Class Member's Release and Covenant Not to Sue is rendered null and void, such Settlement Class Member shall not challenge, if applicable, any Released Party's right to offset any final judgment received by the Settlement Class Member as a result of Section 25.6(g)(ii) in the amount of the Monetary Award or Derivative Claimant Award received by the Settlement Class Member. For the avoidance of any doubt, nothing in this subsection 25.6, shall affect any rights or obligations of Settlement Class Members and Released Parties as otherwise provided in, or with respect to, this Settlement Agreement or any breach thereof.

ARTICLE XXVI

Cooperation

Section 26.1 The Parties will cooperate, assist, and undertake all reasonable actions to accomplish the steps contemplated by this Settlement Agreement

and to implement the Class Action Settlement on the terms and conditions provided herein.

Section 26.2 The Parties agree to take all actions necessary to obtain final approval of the Class Action Settlement and entry of a Final Order and Judgment, including the terms and provisions described in this Settlement Agreement, and, upon final approval and entry of such order, an order dismissing the Class Action Complaint and Related Lawsuits with prejudice as to the Class and Subclass Representatives, the Settlement Class, and each Settlement Class Member.

Section 26.3 The Parties and their counsel agree to support the final approval and implementation of this Settlement Agreement and defend it against objections, appeal, collateral attack or any efforts to hinder or delay its approval and implementation. Neither the Parties nor their counsel, directly or indirectly, will encourage any person to object to the Class Action Settlement or assist them in doing so.

ARTICLE XXVII

Continuing Jurisdiction

Section 27.1 Pursuant to the Final Order and Judgment, the Court will retain continuing and exclusive jurisdiction over the Parties and their counsel, all Settlement Class Members, the Special Master, BAP Administrator, Claims Administrator, Liens Resolution Administrator, Appeals Advisory Panel, Appeals Advisory Panel Consultants, and Trustee with respect to the terms of the Settlement Agreement. Any disputes or controversies arising out of, or related to, the interpretation, implementation, administration, and enforcement of this Settlement Agreement will be made by motion to the Court. In addition, the Parties, including each Settlement Class Member, are hereby deemed to have submitted to the exclusive jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of, or relating to, this Settlement Agreement. The terms of the Settlement Agreement will be incorporated into the Final Order and Judgment of the Court, which will allow that Final Order and Judgment to serve as an enforceable injunction by the Court for purposes of the Court's continuing jurisdiction related to the Settlement Agreement.

(a) Notwithstanding any contrary law applicable to the underlying claims, this Settlement Agreement and the Releases hereunder will be interpreted and enforced in accordance with the laws of the State of New York, without regard to conflict of law principles.

ARTICLE XXVIII

Role of Co-Lead Class Counsel, Class Counsel and Subclass Counsel

Section 28.1 Co-Lead Class Counsel and Class Counsel acknowledge that, under applicable law, their respective duty is to the entire Settlement Class, to act in the best interest of the Settlement Class as a whole, with respect to promoting, supporting, and effectuating, as fair, adequate, and reasonable, the approval, implementation, and administration of the settlement embodied in the Settlement

Agreement, and that their professional responsibilities as attorneys are to be viewed in this light, under the ongoing supervision and jurisdiction of the Court that appoints them to represent the interests of the Settlement Class.

Section 28.2 Subclass Counsel acknowledge that, under applicable law, their respective duty is to their respective Subclasses, to act in the best interest of the respective Subclass as a whole, with respect to promoting, supporting, and effectuating, as fair, adequate, and reasonable, the approval, implementation, and administration of the settlement embodied in the Settlement Agreement, and that their professional responsibilities as attorneys are to be viewed in this light, under the ongoing supervision and jurisdiction of the Court that appoints them to represent the interests of the respective Subclass.

ARTICLE XXIX Bargained-For Benefits

Section 29.1 Nothing in the Collective Bargaining Agreement will preclude Settlement Class Members from receiving benefits under the Settlement Agreement. In addition, the fact that a Settlement Class Member has signed, or will sign, a release and covenant not to sue pursuant to Article 65 of the 2011 Collective Bargaining Agreement will not preclude the Settlement Class Member from receiving benefits under the Settlement Agreement, and the NFL Parties agree not to assert any defense or objection to the Settlement Class Member's receipt of benefits under the Settlement Agreement on the ground that he executed a release and covenant not to sue pursuant to Article 65 of the 2011 Collective Bargaining Agreement.

Section 29.2 A Retired NFL Football Player's participation in the Settlement Agreement will not in any way affect his eligibility for bargained-for benefits under the Collective Bargaining Agreement or the terms or conditions under which those benefits are provided, except as set forth in Section 18.1.

ARTICLE XXX Miscellaneous Provisions

Section 30.1 No Assignment of Claims. Neither the Settlement Class nor any Class or Subclass Representative or Settlement Class Member has assigned, will assign, or will attempt to assign, to any person or entity other than the NFL Parties any rights or claims relating to the subject matter of the Class Action Complaint. Any such assignment, or attempt to assign, to any person or entity other than the NFL Parties any rights or claims relating to the subject matter of the Class Action Complaint will be void, invalid, and of no force and effect and the Claims Administrator shall not recognize any such action.

Section 30.2 Individual Counsel

(a) Counsel individually representing a Settlement Class Member shall provide notice of his or her representation to the Claims Administrator within thirty (30) days of the Effective Date or within thirty (30) days of the retention if

Counsel is retained after the Effective Date. Counsel acting on his or her client's behalf may submit all claim forms, proof, correspondence, or other documents to the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator on behalf of that Settlement Class Member; provided, however, that counsel individually representing a Settlement Class Member may not sign on behalf of that Settlement Class Member: (i) an Opt Out request; (ii) a revocation of an Opt Out; (iii) an objection, as set forth in Section 14.3; (iv) a Claim Form, (v) a Derivative Claim Form, or (vi) an Appeals Form.

(b) Where a Settlement Class Member indicates in writing to the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator that he or she is individually represented by counsel, the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator will copy the counsel individually representing a Settlement Class Member on any written communications with the Settlement Class Member. Any communications, whether written or oral, by the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator with counsel individually representing a Settlement Class Member will be deemed to be a communication directly with such individually represented Settlement Class Member.

Section 30.3 Integration. This Settlement Agreement and its exhibits, attachments, and appendices will constitute the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, letters, conversations, agreements, term sheets, and understandings, whether written or oral, relating to the subject matter of this Settlement Agreement, including the Settlement Term Sheet dated August 29, 2013. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, agreement, arrangement, or understanding, whether written or oral, concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement.

Section 30.4 Headings. The headings used in this Settlement Agreement are intended for the convenience of the reader only and will not affect the meaning or interpretation of this Settlement Agreement in any manner. Any inconsistency between the headings used in this Settlement Agreement and the text of the Articles and Sections of this Settlement Agreement will be resolved in favor of the text.

Section 30.5 Incorporation of Exhibits. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, any inconsistency between this Settlement Agreement and any attachments, exhibits, or appendices hereto will be resolved in favor of this Settlement Agreement.

Section 30.6 Amendment. This Settlement Agreement will not be subject to any change, modification, amendment, or addition without the express written consent of Class Counsel and Counsel for the NFL Parties, on behalf of all Parties to this Settlement Agreement, and upon Court approval.

Section 30.7 Mutual Preparation. The Parties have negotiated all of the terms and conditions of this Settlement Agreement at arm's length. Neither the Settlement Class Members nor the NFL Parties, nor any one of them, nor any of their counsel will be considered to be the sole drafter of this Settlement Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement. This Settlement Agreement will be deemed to have been mutually prepared by the Parties and will not be construed against any of them by reason of authorship.

Section 30.8 Beneficiaries. This Settlement Agreement will be binding upon the Parties and will inure to the benefit of the Settlement Class Members and the Released Parties. All Released Parties who are not the NFL Parties are intended third-party beneficiaries who are entitled to enforce the terms of the Releases and Covenant Not to Sue set forth in ARTICLE XVIII. No provision in this Settlement Agreement is intended to create any third-party beneficiary to this Settlement Agreement other than the Released Parties. Nothing expressed or implied in this Settlement Agreement is intended to or will be construed to confer upon or give any person or entity other than Class and Subclass Representatives, the Settlement Class Members, Class Counsel, the NFL Parties, the Released Parties, and Counsel for the NFL Parties, any right or remedy under or by reason of this Settlement Agreement.

Section 30.9 Extensions of Time. Co-Lead Class Counsel and Counsel for the NFL Parties may agree in writing, subject to approval of the Court where required, to reasonable extensions of time to implement the provisions of this Settlement Agreement.

Section 30.10 Execution in Counterparts. This Settlement Agreement may be executed in counterparts, and a facsimile signature will be deemed an original signature for purposes of this Settlement Agreement.

Section 30.11 Good Faith Implementation. Co-Lead Class Counsel and Counsel for the NFL Parties will undertake to implement the terms of this Settlement Agreement in good faith. Before filing any motion or petition in the Court raising a dispute arising out of or related to this Settlement Agreement, Co-Lead Class Counsel and Counsel for the NFL Parties will consult with each other in good faith and certify to the Court that they have conferred in good faith.

Section 30.12 Force Majeure. The Parties will be excused from any failure to perform timely any obligation hereunder to the extent such failure is caused by war, acts of public enemies or terrorists, strikes or other labor disturbances, fires, floods, acts of God, or any causes of the like or different kind beyond the reasonable control of the Parties.

Section 30.13 Waiver. The waiver by any Party of any breach of this Settlement Agreement by another Party will not be deemed or construed as a waiver of

any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.


Section 30.14 Tax Consequences. No opinion regarding the tax consequences of this Settlement Agreement to any individual Settlement Class Member is being given or will be given by the NFL Parties, Counsel for the NFL Parties, Class and Subclass Representatives, Class Counsel, nor is any representation or warranty in this regard made by virtue of this Settlement Agreement. Settlement Class Members must consult their own tax advisors regarding the tax consequences of the Settlement Agreement, including any payments provided hereunder and any tax reporting obligations they may have with respect thereto. Each Settlement Class Member's tax obligations, and the determination thereof, are his or her sole responsibility, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member. The NFL Parties, Counsel for the NFL Parties, Class Counsel will have no liability or responsibility whatsoever for any such tax consequences resulting from payments under this Settlement Agreement. To the extent required by law, the Claims Administrator will report payments made under the Settlement Agreement to the appropriate authorities.

Section 30.15 Issuance of Notices and Submission of Materials. In any instance in which this Settlement Agreement requires the issuance of any notice regarding registration, a claim or an award, unless specified otherwise in this Settlement Agreement, such notice must be issued by: (a) online submission through any secure web-based portal established by the Claims Administrator for this purpose to the Settlement Class Member or NFL Parties, which shall be accompanied by an email certifying receipt; or (b) U.S. mail (or its foreign equivalent). In any instance in which this Settlement Agreement requires submission of materials by or on behalf of a Settlement Class Member or the NFL Parties, unless specified otherwise in this Settlement Agreement, such submission must be made by: (a) online submission through any secure web-based portal established by the Claims Administrator for this purpose; or (b) U.S. mail (or its foreign equivalent); or (c) delivery. Written notice to the Class Representatives or Co-Lead Class Counsel must be given to: Christopher A. Seeger, Seeger Weiss LLP, 77 Water Street, New York, New York 10005; and Sol Weiss, Anapol Schwartz, 1710 Spruce Street, Philadelphia, PA 19103. Written notice to the NFL Parties or Counsel for the NFL Parties must be given to: Jeffrey Pash, Executive Vice President and General Counsel, National Football League, 345 Park Avenue, New York, New York 10154; Anastasia Danias, Senior Vice President and Chief Litigation Officer, National Football League, 345 Park Avenue, New York, New York 10154; and Brad S. Karp, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, or such other person or persons as shall be designated by the Parties.


Section 30.16 Party Burden. Unless explicitly provided otherwise, whenever a showing is required to be made in this Settlement Agreement, the party seeking the relief shall bear the burden of substantiation.

Agreed to as of this 13th day of February, 2015.

NATIONAL FOOTBALL LEAGUE, NFL PROPERTIES LLC

By: 
Jeffrey Pash
NFL Executive Vice President

COUNSEL FOR THE NFL PARTIES

By: 
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
Brad S. Karp
Theodore V. Wells, Jr.
Bruce Birenboim
Beth A. Wilkinson
Lynn B. Bayard

CO-LEAD CLASS COUNSEL

By: _____
SEEGER WEISS LLP
Christopher A. Seeger

By: _____
ANAPOL SCHWARTZ
Sol Weiss

CLASS COUNSEL

By: _____
PODHURST ORSECK, P.A.
Steven C. Marks

By: _____
LOCKS LAW FIRM
Gene Locks

SUBCLASS COUNSEL

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LEVIN, FISHBEIN, SEDRAN &
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CO-LEAD CLASS COUNSEL

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Christopher A. Seeger

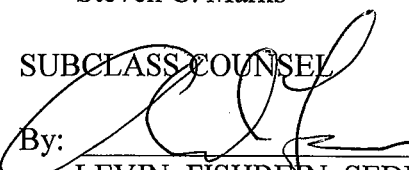
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Agreed to as of this 13th day of February, 2015.

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EXHIBIT A-1

INJURY DEFINITIONS

DIAGNOSIS FOR BAP SUPPLEMENTAL BENEFITS

Level 1 Neurocognitive Impairment

(a) For Retired NFL Football Players diagnosed through the BAP, a diagnosis of Level 1 Neurocognitive Impairment must meet the criteria set forth in subsections (i)-(iv) below:

(i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a decline in cognitive function.

(ii) Evidence of moderate cognitive decline from a previous level of performance, as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement, in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial), provided one of the cognitive domains is (a) executive function, (b) learning and memory, or (c) complex attention.

(iii) The Retired NFL Football Player exhibits functional impairment generally consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating scale Category 0.5 (Questionable) in the areas of Community Affairs, Home & Hobbies, and Personal Care.

(iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.

(b) Level 1 Neurocognitive Impairment, for the purposes of this Settlement Agreement, may only be diagnosed by Qualified BAP Providers during a BAP baseline assessment examination, with agreement on the diagnosis by the Qualified BAP Providers.

QUALIFYING DIAGNOSES FOR MONETARY AWARDS

1. Level 1.5 Neurocognitive Impairment

(a) For Retired NFL Football Players diagnosed through the BAP, a diagnosis of Level 1.5 Neurocognitive Impairment must meet the criteria set forth in subsections (i)-(iv) below:

(i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a severe decline in cognitive function.

(ii) Evidence of a moderate to severe cognitive decline from a previous level of performance, as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement, in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial), provided one of the cognitive domains is (a) executive function, (b) learning and memory, or (c) complex attention.

(iii) The Retired NFL Football Player exhibits functional impairment generally consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating (CDR) scale Category 1.0 (Mild) in the areas of Community Affairs, Home & Hobbies, and Personal Care. Such functional impairment shall be corroborated by documentary evidence (*e.g.*, medical records, employment records), the sufficiency of which will be determined by the physician making the Qualifying Diagnosis. In the event that no documentary evidence of functional impairment exists or is available, then (a) there must be evidence of moderate to severe cognitive decline from a previous level of performance, as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement, in the executive function cognitive domain or the learning and memory cognitive domain, and at least one other cognitive domain; and (b) the Retired NFL Football Player's functional impairment, as described above, must be corroborated by a third-party sworn affidavit from a person familiar with the Retired NFL Football Player's condition (other than the player or his family members), the sufficiency of which will be determined by the physician making the Qualifying Diagnosis.

(iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.

(b) For living Retired NFL Football Players diagnosed outside of the BAP, a diagnosis while living of Level 1.5 Neurocognitive Impairment, *i.e.*, early dementia, based on evaluation and evidence generally consistent with the diagnostic criteria set forth in subsection 1(a)(i)-(iv) above, made by a Qualified MAF Physician or a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, as set forth and provided in Sections 6.3(b)-(d) of the Settlement Agreement.

(c) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis of Level 1.5 Neurocognitive Impairment, *i.e.*, early dementia, based on evaluation and evidence generally consistent with the diagnostic criteria set forth in subsection 1(a)(i)-(iv)

above, made while the Retired NFL Football Player was living by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology or neurocognitive disorders, as set forth and provided in Sections 6.3(c)-(e) of the Settlement Agreement.

2. **Level 2 Neurocognitive Impairment**

(a) For Retired NFL Football Players diagnosed through the BAP, a diagnosis of Level 2 Neurocognitive Impairment must meet the criteria set forth in subsections (i)-(iv) below:

(i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a severe decline in cognitive function.

(ii) Evidence of a severe cognitive decline from a previous level of performance, as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement, in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial), provided one of the cognitive domains is (a) executive function, (b) learning and memory, or (c) complex attention.

(iii) The Retired NFL Football Player exhibits functional impairment generally consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating (CDR) scale Category 2.0 (Moderate) in the areas of Community Affairs, Home & Hobbies, and Personal Care. Such functional impairment shall be corroborated by documentary evidence (*e.g.*, medical records, employment records), the sufficiency of which will be determined by the physician making the Qualifying Diagnosis. In the event that no documentary evidence of functional impairment exists or is available, then (a) there must be evidence of severe cognitive decline from a previous level of performance, as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement, in the executive function cognitive domain or the learning and memory cognitive domain, and at least one other cognitive domain; and (b) the Retired NFL Football Player's functional impairment, as described above, must be corroborated by a third-party sworn affidavit from a person familiar with the Retired NFL Football Player's condition (other than the player or his family members), the sufficiency of which will be determined by the physician making the Qualifying Diagnosis.

(iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.

(b) For living Retired NFL Football Players diagnosed outside of the BAP, a diagnosis while living of Level 2 Neurocognitive Impairment, *i.e.*, moderate dementia, based on evaluation and evidence generally consistent with the diagnostic criteria set forth in subsection 2(a)(i)-(iv) above, unless the diagnosing physician can certify in the Diagnosing Physician Certification that certain testing in 2(a)(i)-(iv) is medically unnecessary because the Retired NFL Football Player's dementia is so severe, made by a Qualified MAF Physician or a board-certified

or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, as set forth and provided in Sections 6.3(b)-(d) of the Settlement Agreement.

(c) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis of Level 2 Neurocognitive Impairment, *i.e.*, moderate dementia, based on evaluation and evidence generally consistent with the diagnostic criteria set forth in subsection 2(a)(i)-(iv) above, unless the diagnosing physician can certify in the Diagnosing Physician Certification that certain testing in 2(a)(i)-(iv) was medically unnecessary because the Retired NFL Football Player's dementia was so severe, made while the Retired NFL Football Player was living by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology or neurocognitive disorders, as set forth and provided in Sections 6.3(c)-(e) of the Settlement Agreement.

3. Alzheimer's Disease

(a) For living Retired NFL Football Players, a diagnosis while living of the specific disease of Alzheimer's Disease as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9), the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10), or a diagnosis of Major Neurocognitive Disorder due to probable Alzheimer's Disease as defined in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), made by a Qualified MAF Physician or a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, as set forth and provided in Sections 6.3(b)-(d) of the Settlement Agreement.

(b) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis of Major Neurocognitive Disorder due to probable Alzheimer's Disease consistent with the definition in *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), or a diagnosis of Alzheimer's Disease, made while the Retired NFL Football Player was living by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology to make such a diagnosis, as set forth and provided in Sections 6.3(c)-(e) of the Settlement Agreement.

4. Parkinson's Disease

(a) For living Retired NFL Football Players, a diagnosis while living of the specific disease of Parkinson's Disease as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9), the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10), or a diagnosis of Major Neurocognitive Disorder probably due to Parkinson's Disease as defined in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), made by a Qualified MAF Physician or a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, as set forth and provided in Sections 6.3(b)-(d) of the Settlement Agreement.

(b) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis of Parkinson's Disease, made while the Retired NFL Football Player was living by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist

physician, or by a physician with sufficient qualifications in the field of neurology to make such a diagnosis, as set forth and provided in Sections 6.3(c)-(e) of the Settlement Agreement.

5. **Death with Chronic Traumatic Encephalopathy (CTE)**

For Retired NFL Football Players who died prior to the Final Approval Date, a post-mortem diagnosis of CTE made by a board-certified neuropathologist prior to the Final Approval Date, provided that a Retired NFL Football Player who died between July 7, 2014 and the Final Approval Date shall have until 270 days from his date of death to obtain such a post-mortem diagnosis.

6. **Amyotrophic Lateral Sclerosis (ALS)**

(a) For living Retired NFL Football Players, a diagnosis while living of the specific disease of Amyotrophic Lateral Sclerosis, also known as Lou Gehrig's Disease ("ALS"), as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9) or the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10), made by a Qualified MAF Physician or a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, as set forth and provided in Sections 6.3(b)-(d) of the Settlement Agreement.

(b) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis of ALS, made while the Retired NFL Football Player was living by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology to make such a diagnosis, as set forth and provided in Sections 6.3(c)-(e) of the Settlement Agreement.

EXHIBIT A-2

**BASELINE NEUROPSYCHOLOGICAL TEST BATTERY AND SPECIFIC IMPAIRMENT
CRITERIA FOR RETIRED NFL FOOTBALL PLAYERS**

Section 1. Test Battery

| | |
|--|---|
| Estimating Premorbid Intellectual Ability | Learning and Memory (6 scores) |
| ACS Test of Premorbid Functioning (TOPF) | WMS-IV Logical Memory I |
| Complex Attention/Processing Speed (6 scores) | WMS-IV Logical Memory II |
| WAIS-IV Digit Span | WMS-IV Verbal Paired Associates I |
| WAIS-IV Arithmetic | WMS-IV Verbal Paired Associates II |
| WAIS-IV Letter Number Sequencing | WMS-IV Visual Reproduction I |
| WAIS-IV Coding | WMS-IV Visual Reproduction II |
| | |
| WAIS-IV Symbol Search | Language (3 scores) |
| WAIS-IV Cancellation | Boston Naming Test |
| Executive Functioning (4 scores) | Category Fluency (Animal Naming) |
| Verbal Fluency (FAS) | BDAE Complex Ideational Material |
| Trails B | Spatial-Perceptual (3 scores) |
| Booklet Category Test | WAIS-IV Block Design |
| WAIS-IV Similarities | WAIS-IV Visual Puzzles |
| Effort/Performance Validity (8 scores) | WAIS-IV Matrix Reasoning |
| <i>ACS Effort Scores</i> | Mental Health |
| ACS-WAIS-IV Reliable Digit Span | MMPI-2RF |
| ACS-WMS-IV Logical Memory Recognition | Mini International Neuropsychiatric Interview |
| ACS-WMS-IV Verbal Paired Associates Recognition | |
| ACS-WMS-IV Visual Reproduction Recognition | |
| ACS-Word Choice | |
| <i>Additional Effort Tests</i> | |
| Test of Memory Malingering (TOMM) | |
| Medical Symptom Validity Test (MSVT) | |

Section 2: Evaluate Performance Validity

Freestanding, embedded and regression based performance validity metrics will be administered to each Retired NFL Football Player during baseline and, if relevant, subsequent neuropsychological examinations. There will be at least seven performance validity metrics utilized during each assessment. The specific performance validity metrics utilized will not be released to the public in order to maintain the highest standards of assessment validity. The performance validity metrics employed will be rotated at intervals determined by the Appeals Advisory Panel in consultation with Co-Lead Class Counsel and Counsel for the NFL Parties.

Each neuropsychological examiner must complete a checklist of validity criteria as set forth in *Slick et al.* 1999, and revised in 2013 (see below) for every Retired NFL Football Player examined in order to determine whether the Retired NFL Football Player's test data is a valid reflection of his optimal level of neurocognitive functioning.

1. Suboptimal scores on performance validity embedded indicators or tests. The cutoffs for each test should be established based on empirical findings.
2. A pattern of neuropsychological test performance that is markedly discrepant from currently accepted models of normal and abnormal central nervous system (CNS) function. The discrepancy must be consistent with an attempt to exaggerate or fabricate neuropsychological dysfunction (e.g., a patient performs in the severely impaired range on verbal attention measures but in the average range on memory testing; a patient misses items on recognition testing that were consistently provided on previous free recall trials, or misses many easy items when significantly harder items from the same test are passed).
3. Discrepancy between test data and observed behavior. Performance on two or more neuropsychological tests within a domain are discrepant with observed level of cognitive function in a way that suggests exaggeration or fabrication of dysfunction (e.g., a well-educated patient who presents with no significant visual-perceptual deficits or language disturbance in conversational speech performs in the severely impaired range on verbal fluency and confrontation naming tests).
4. Discrepancy between test data and reliable collateral reports. Performance on two or more neuropsychological tests within a domain are discrepant with day-to-day level of cognitive function described by at least one reliable collateral informant in a way that suggests exaggeration or fabrication of dysfunction (e.g., a patient handles all family finances but is unable to perform simple math problems in testing).
5. Discrepancy between test data and documented background history. Improbably poor performance on two or more standardized tests of cognitive function within a specific domain (e.g., memory) that is inconsistent with documented neurological or psychiatric history.

6. Self-reported history is discrepant with documented history. Reported history is markedly discrepant with documented medical or psychosocial history and suggests attempts to exaggerate deficits.
7. Self-reported symptoms are discrepant with known patterns of brain functioning. Reported or endorsed symptoms are improbable in number, pattern, or severity; or markedly inconsistent with expectations for the type or severity of documented medical problems.
8. Self-reported symptoms are discrepant with behavioral observations. Reported symptoms are markedly inconsistent with observed behavior (e.g., a patient complains of severe episodic memory deficits yet has little difficulty remembering names, events, or appointments; a patient complains of severe cognitive deficits yet has little difficulty driving independently and arrives on time for an appointment in an unfamiliar area; a patient complains of severely slowed mentation and concentration problems yet easily follows complex conversation).
9. Self-reported symptoms are discrepant with information obtained from collateral informants. Reported symptoms, history, or observed behavior is inconsistent with information obtained from other informants judged to be adequately reliable. The discrepancy must be consistent with an attempt to exaggerate deficits (e.g., a patient reports severe memory impairment and/or behaves as if severely memory-impaired, but his spouse reports that the patient has minimal memory dysfunction at home).

Notwithstanding a practitioner's determination of sufficient effort in accordance with the foregoing factors, a Retired NFL Football Player's failure on two or more effort tests may result in the Retired NFL Football Player's test results being subjected to independent review, or result in a need for supplemental testing of the Retired NFL Football Player.

Note: Additional information relating to the evaluation of effort and performance validity will be provided in a clinician's interpretation guide.

Section 3. Estimate Premorbid Intellectual Ability

| Test | Ability |
|--------------------------------------|--|
| Test of Premorbid Functioning (TOPF) | Reading Reading + Demographic Variables |

The Test of Premorbid Functioning (TOPF) provides three models for predicting premorbid functioning: (a) demographics only, (b) TOPF only, and (c) combined demographics and TOPF prediction equations. For each model using demographic data, a simple and complex prediction equation can be selected. In the simple model, only sex, race/ethnicity, and education, are used in predicting premorbid ability. In the complex model, developmental, personal, and more specific demographic data is incorporated into the equations. The clinician should select a model based on the patient's background and his or her current level of reading or language impairment.

Note: It is necessary to estimate premorbid intellectual functioning in order to use the criteria for impairment set out in this document. Estimated premorbid intellectual ability will be assessed and classified as:

- Below Average (estimated IQ below 90);
- Average (estimated IQ between 90 and 109);
- Above Average (estimated IQ above 110).

Section 4. Neuropsychological Test Score Criteria by Domain of Cognitive Functioning

There are 5 domains of cognitive functioning. In each domain, there are several tests that contribute 3, 4, or 6 demographically-adjusted test scores for consideration. Test selection in the domains was based on the availability of demographically-adjusted normative data for Caucasians and African Americans. These domains and scores are set out below.

The basic principle for defining impairment on testing is that there must be a pattern of performance that is approximately 1.5 standard deviations (for Level 1 Impairment), 1.7-1.8 standard deviations (for Level 1.5 Impairment) or 2 standard deviations (for Level 2 Impairment) below the person's expected level of premorbid functioning. Therefore, it is necessary to have more than one low test score in each domain. A user manual will be provided to neuropsychologists setting out the cutoff scores, criteria for identifying impairment in each cognitive domain, and statistical and normative data to support the impairment criteria.

| Domain/Test | Ability |
|---|------------------------------------|
| Complex Attention/Speed of Processing (6 Scores) | |
| Digit Span | Attention & Working Memory |
| Arithmetic | Mental Arithmetic |
| Letter Number Sequencing | Attention & Working Memory |
| Coding | Visual-Processing & Clerical Speed |
| Symbol Search | Visual-Scanning & Processing Speed |
| Cancellation | Visual-Scanning Speed |
| Executive Functioning (4 scores) | |
| Similarities | Verbal Reasoning |
| Verbal Fluency (FAS) | Phonemic Verbal Fluency |
| Trails B | Complex Sequencing |
| Booklet Category Test | Conceptual Reasoning |
| Learning and Memory (6 scores) | |
| Logical Memory I | Immediate Memory for Stories |
| Logical Memory II | Delayed Memory for Stories |
| Verbal Paired Associates I | Learning Word Pairs |
| Verbal Paired Associates II | Delayed Memory for Word Pairs |
| Visual Reproduction I | Immediate Memory for Designs |
| Visual Reproduction II | Delayed Memory for Designs |
| Language | |
| Boston Naming Test | Confrontation Naming |
| BDAE Complex Ideational Material | Language Comprehension |
| Category Fluency | Category (Semantic) Fluency |
| Visual-Perceptual | |
| Block Design | Spatial Skills & Problem Solving |
| Visual Puzzles | Visual Perceptual Reasoning |
| Matrix Reasoning | Visual Perceptual Reasoning |

Impairment Criteria: *Below Average* Estimated Intellectual Functioning (A1 – E1)

| |
|---|
| A1. Complex Attention (6 test scores) |
| 1. Level 1 Impairment: 3 or more scores below a T score of 35 |
| 2. Level 1.5 Impairment: 4 or more scores below a T score of 35; or meet for Level 1 and 2 scores below a T score of 30 |
| 3. Level 2 Impairment: 3 or more scores below a T score of 30 |
| B1. Executive Function (4 test scores) |
| 1. Level 1 Impairment: 2 or more scores below a T score of 35 |
| 2. Level 1.5 Impairment: 3 or more scores below a T score of 35; or meet for Level 1 and 1 score below a T score of 30 |
| 3. Level 2 Impairment: 2 or more scores below a T score of 30 |
| C1. Learning and Memory (6 test scores) |
| 1. Level 1 Impairment: 3 or more scores below a T score of 35 |
| 2. Level 1.5 Impairment: 4 or more scores below a T score of 35; or meet for Level 1 and 2 scores below a T score of 30 |
| 3. Level 2 Impairment: 3 or more scores below a T score of 30 |
| D1. Language (3 test scores) |
| 1. Level 1 Impairment: 3 or more scores below a T score of 37 |
| 2. Level 1.5 Impairment: meet for Level 1 and 2 scores below a T score of 35 |
| 3. Level 2 Impairment: 3 or more scores below a T score of 35 |
| E1. Visual-Perceptual (3 test scores) |
| 1. Level 1 Impairment: 3 or more scores below a T score of 37 |
| 2. Level 1.5 Impairment: meet for Level 1 and 2 scores below a T score of 35 |
| 3. Level 2 Impairment: 3 or more scores below a T score of 35 |

Impairment Criteria: *Average* Estimated Intellectual Functioning (A2 – E2)

| |
|--|
| A2. Complex Attention (6 test scores) |
| 1. Level 1 Impairment: 2 or more scores below a T score of 35 |
| 2. Level 1.5 Impairment: 3 or more scores below a T score of 35; or meet for Level 1 and 1 score below a T score of 30 |
| 3. Level 2 Impairment: 2 or more scores below a T score of 30 |
| B2. Executive Function (4 test scores) |
| 1. Level 1 Impairment: 2 or more scores below a T score of 35 |
| 2. Level 1.5 Impairment: 3 or more scores below a T score of 35; or meet for Level 1 and 1 score below a T score of 30 |
| 3. Level 2 Impairment: 2 or more scores below a T score of 30 |
| C2. Learning and Memory (6 test scores) |
| 1. Level 1 Impairment: 3 or more scores below a T score of 35 |
| 2. Level 1.5 Impairment: 4 or more scores below a T score of 35; or meet for Level 1 and 1 score below a T score of 30 |
| 3. Level 2 Impairment: 2 or more scores below a T score of 30 |
| D2. Language (3 test scores) |
| 1. Level 1 Impairment: 2 or more scores below a T score of 37 |
| 2. Level 1.5 Impairment: 3 or more scores below a T score of 37; or meet for Level 1 and 1 score below a T score of 35 |
| 3. Level 2 Impairment: 2 or more scores below a T score of 35 |
| E2. Visual-Perceptual (3 test scores) |
| 1. Level 1 Impairment: 2 or more scores below a T score of 37 |
| 2. Level 1.5 Impairment: 3 or more scores below a T score of 37; or meet for Level 1 and 1 score below a T score of 35 |
| 3. Level 2 Impairment: 2 or more scores below a T score of 35 |

Impairment Criteria: *Above Average* Estimated Intellectual Functioning (A3 – E3)

| |
|---|
| A3. Complex Attention (6 test scores) |
| 1. Level 1 Impairment: 2 or more scores below a T score of 35 |
| 2. Level 1.5 Impairment: meet for Level 1 and 3 or more scores below a T score of 37 |
| 3. Level 2 Impairment: 3 or more scores below a T score of 35 |
| B3. Executive Function (4 test scores) |
| 1. Level 1 Impairment: 2 or more scores below a T score of 37 |
| 2. Level 1.5 Impairment: meet for Level 1 and 3 or more scores below a T score of 37; or meet for Level 1 and 1 score below a T score of 30 |
| 3. Level 2 Impairment: 2 or more scores below a T score of 30 |
| C3. Learning and Memory (6 test scores) |
| 1. Level 1 Impairment: 2 or more scores below a T score of 35 |
| 2. Level 1.5 Impairment: meet for Level 1 and 3 or more scores below a T score of 37 |
| 3. Level 2 Impairment: 3 or more scores below a T score of 35 |
| D3. Language (3 test scores) |
| 1. Level 1 Impairment: 2 or more scores below a T score of 40 |
| 2. Level 1.5 Impairment: 3 scores below at T score of 40; or meet for Level 1 and 1 score below a T score of 37 |
| 3. Level 2 Impairment: 2 or more scores below a T score of 37 |
| E3. Visual-Perceptual (3 test scores) |
| 1. Level 1 Impairment: 2 or more scores below a T score of 40 |
| 2. Level 1.5 Impairment: 3 scores below at T score of 40; or meet for Level 1 and 1 score below a T score of 37 |
| 3. Level 2 Impairment: 2 or more scores below a T score of 37 |

Section 5: Mental Health Assessment

| Test | Symptoms/Functioning | Assessment |
|--|---------------------------------------|---|
| MMPI-2RF | Mental Health Assessment | Evaluation of Validity Scales and Configurations; T-Scores for Symptom Domains |
| Mini International Neuropsychiatric Interview (M.I.N.I. Version 5.0.0) | Semi-structured Psychiatric Interview | Scale Criteria for Various Psychiatric Diagnoses |

EXHIBIT A-3

MONETARY AWARD GRID
(BY AGE AT TIME OF QUALIFYING DIAGNOSIS)

| Age Group | ALS | Death w/CTE | Parkinson's | Alzheimer's | Level 2 | Level 1.5 |
|-----------|-------------|-------------|-------------|-------------|-------------|-------------|
| Under 45 | \$5,000,000 | \$4,000,000 | \$3,500,000 | \$3,500,000 | \$3,000,000 | \$1,500,000 |
| 45-49 | \$4,500,000 | \$3,200,000 | \$2,470,000 | \$2,300,000 | \$1,900,000 | \$950,000 |
| 50-54 | \$4,000,000 | \$2,300,000 | \$1,900,000 | \$1,600,000 | \$1,200,000 | \$600,000 |
| 55-59 | \$3,500,000 | \$1,400,000 | \$1,300,000 | \$1,150,000 | \$950,000 | \$475,000 |
| 60-64 | \$3,000,000 | \$1,200,000 | \$1,000,000 | \$950,000 | \$580,000 | \$290,000 |
| 65-69 | \$2,500,000 | \$980,000 | \$760,000 | \$620,000 | \$380,000 | \$190,000 |
| 70-74 | \$1,750,000 | \$600,000 | \$475,000 | \$380,000 | \$210,000 | \$105,000 |
| 75-79 | \$1,000,000 | \$160,000 | \$145,000 | \$130,000 | \$80,000 | \$40,000 |
| 80+ | \$300,000 | \$50,000 | \$50,000 | \$50,000 | \$50,000 | \$25,000 |

The above Monetary Award levels are the average base Monetary Awards for each of the Qualifying Diagnoses for particular age groups, except for the “Under 45” and “80+” rows, which list the maximum and minimum base Monetary Awards, respectively, for those age groups. A Settlement Class Member’s actual base Monetary Award for ages 45-79 may be higher or lower than the average base Monetary Award listed for the Retired NFL Football Player’s age group, depending on the Retired NFL Football Player’s actual age at the time of Qualifying Diagnosis.

Base Monetary Awards are subject to: (a) upward adjustment for inflation, as provided in Section 6.7 of the Settlement Agreement; and (b) downward adjustment based on Offsets (Number of Eligible Seasons, medically diagnosed Stroke occurring prior to a Qualifying Diagnosis, medically diagnosed Traumatic Brain Injury occurring prior to a Qualifying Diagnosis, and non-participation in the BAP by a Retired NFL Football Player in Subclass 1, under the circumstances described in detail in the Settlement Agreement), as provided in Section 6.5(b) of the Settlement Agreement.

EXHIBIT A-4

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | | |
|---|---|---------------------------------|
| IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION | : | No. 2:12-md-02323-AB |
| | : | |
| | : | MDL No. 2323 |
| | : | |
| Kevin Turner and Shawn Wooden, <i>on behalf of themselves and others similarly situated,</i> | : | |
| Plaintiffs, | : | Civ. Action No.: 14-cv-00029-AB |
| | : | |
| v. | : | |
| | : | |
| National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc., | : | |
| Defendants. | : | |
| THIS DOCUMENT RELATES TO: ALL ACTIONS | : | |

[PROPOSED] FINAL ORDER AND JUDGMENT

On January 6, 2014, Plaintiffs in the above-referenced action ("Action") filed a Class Action Complaint and on June 25, 2014 a Settlement Agreement was entered into by and among defendants the National Football League ("NFL") and NFL Properties LLC ("NFL Properties") (collectively, "NFL Parties"), by and through their attorneys, and the Class Representatives and Subclass Representatives, individually and on behalf of the Settlement Class and Subclasses, by and through Co-Lead Class Counsel, Class Counsel and Subclass Counsel.

On [DATE], the Court entered a Preliminary Approval and Conditional Class Certification Order ("Preliminary Order") that, among other things: (i) preliminarily approved

the Settlement Agreement; (ii) for purposes of the Settlement Agreement only, conditionally certified the Settlement Class and Subclasses; (iii) appointed Co-Lead Class Counsel, Class Counsel, and Subclass Counsel; (iv) approved the form and method of notice of the Settlement Agreement to the Settlement Class and Subclasses and directed that appropriate notice of the Settlement Agreement be disseminated; (v) scheduled a Fairness Hearing for final approval of the Settlement Agreement; and (vi) stayed this matter and all Related Lawsuits in this Court and enjoined proposed Settlement Class Members from pursuing Related Lawsuits.

In its Preliminary Order, pursuant to Fed. R. Civ. P. 23(b)(3), the Court defined and certified the Settlement Class as follows:

- (i) All living NFL Football Players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players, or were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and who no longer are under contract to a Member Club and are not seeking active employment as players with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club (“Retired NFL Football Players”); and
- (ii) Authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players (“Representative Claimants”); and
- (iii) Spouses, parents, children who are dependents, or any other persons who properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player (“Derivative Claimants”).

In its Preliminary Order, pursuant to Fed. R. Civ. P. 23(b)(3), the Court defined and certified the Subclasses as follows:

- (i) “Subclass 1” means Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants.

- (ii) “Subclass 2” means Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a post-mortem diagnosis of CTE.

Notice was provided to Settlement Class Members pursuant to the Settlement

Class Notice Plan approved in the Preliminary Order. (*See* Settlement Class Notice Plan attached to the Declaration of Katherine Kinsella, Class Notice Agent.) Counsel for the NFL Parties and Class Counsel worked together with the Settlement Class Notice Agent to fashion a Settlement Class Notice Plan that was tailored to the specific claims and Settlement Class Members of this case. Settlement Class Notice was disseminated to all known Settlement Class Members by U.S. first-class mail by [INSERT DATE]. In addition, a Summary Notice was published in accordance with the Settlement Class Notice Plan and Co-Lead Class Counsel caused to be established an automated telephone system that uses a toll-free number to respond to questions from Settlement Class Members. Co-Lead Class Counsel also caused to be established and maintained a public website that provided information about the proposed Class Action Settlement, including the Settlement Agreement, frequently asked questions, the Preliminary Order, and relevant dates for objecting to the Class Action Settlement, opting out of the Settlement Class, and the date and place of the Fairness Hearing. The website allowed Settlement Class Members to identify themselves so that Settlement Class Notice could be mailed to them. Class Counsel have established that the Settlement Class Notice Plan was implemented.

[] Settlement Class Members have chosen to be excluded from the Settlement Class by timely filing written requests for exclusion (“Opt Outs”). The Opt Outs are listed at the end of this Order in Exhibit [].

[] Settlement Class Members submitted objections to the Class Action Settlement under the process set by the Preliminary Order.

On [DATE], at [TIME], the Court held the Fairness Hearing to consider whether the Class Action Settlement was fair, reasonable, adequate, and in the best interests of the Settlement Class and Subclasses. At the Fairness Hearing, [NAMES] appeared on behalf of the Class Representatives, Subclass Representatives and Settlement Class Members, and [NAMES] appeared on behalf of the NFL Parties. Additionally, the following individuals also appeared at the Fairness Hearing having timely submitted a Notice of Intention to Appear. [INSERT LIST]

The Court, having heard arguments of counsel for the Parties and of the persons who appeared at the Fairness Hearing [REFERENCE OBJECTIONS, if any], having reviewed all materials submitted, having considered all of the files, records, and proceedings in this Action, and being otherwise fully advised,

HEREBY ORDERS THAT:

1. Jurisdiction. This Court retains continuing and exclusive jurisdiction over the Action, Parties and their counsel, all Settlement Class Members, the Special Master, BAP Administrator, Claims Administrator, Lien Resolution Administrator, Appeals Advisory Panel, Appeals Advisory Panel Consultants, Trustee and Settlement Agreement, including its enforcement and interpretation, and all other matters relating to it. This Court also retains continuing jurisdiction over the “qualified settlement funds,” as defined under § 1.468B-1 of the

Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986 as amended, created under the Settlement Agreement.

2. Incorporation of Settlement Documents. This Order and Judgment incorporates and makes a part hereof: (a) the Settlement Agreement and exhibits filed with the Court on June 25, 2014, including definitions of the terms used therein and (b) the Settlement Class Notice Plan and the Summary Notice, both of which were filed with the Court on June 25, 2014. Unless otherwise defined in this Final Order and Judgment, the capitalized terms herein shall have the same meaning as they have in the *In re: National Football League Players' Concussion Injury Litigation*, MDL 2323, Class Action Settlement Agreement dated June 25, 2014.

3. Confirmation of Settlement Class. The provisions of the Preliminary Order that conditionally certified the Settlement Class and Subclasses should be, and hereby are, confirmed in all respects as a final class certification order under Fed. R. Civ. P. 23 for the purposes of implementing the Settlement Agreement. As set forth in the Preliminary Order, the Court finds that, for purposes of effectuating the Settlement Agreement: (a) the Settlement Class Members are so numerous that their joinder is impracticable; (b) there are questions of law and fact common to the Class and Subclasses; (c) the claims of the Class Representatives and Subclass Representatives are typical of the Settlement Class Members and the respective Subclass Members; (d) the Class Representatives and Subclass Representatives and Co-Lead Class Counsel, Class Counsel and Subclass Counsel have fairly and adequately represented and protected the interests of all Settlement Class Members; and (e) the questions of law or fact common to the Class and Subclasses predominate over any questions affecting only individual

Settlement Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. Settlement Notice. The Court finds that pursuant to Federal Rule of Civil Procedure 23(c)(2)(B) the dissemination of the Settlement Class Notice and the publication of the Summary Notice: (i) were implemented in accordance with the Preliminary Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members (a) of the effect of the Settlement Agreement (including the Releases provided for therein), (b) that the NFL Parties agreed not to object to a petition for class attorneys' fees and reasonable incurred costs up to \$112.5 million, and that at a later date, to be determined by the Court, Class Counsel may petition the Court for an award of attorneys' fees and reasonable incurred costs, and Settlement Class Members may comment on or object to the petition, (c) of their right to opt out or object to any aspect of the Settlement Agreement, (d) of their right to revoke an Opt Out prior to the Final Approval Date, and (e) of their right to appear at the Fairness Hearing; (iv) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the proposed Settlement Agreement; and (v) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause) and other applicable laws and rules. The Notice given by the NFL Parties to state and federal officials pursuant to 28 U.S.C. § 1715 fully satisfied the requirements of that statute.

5. Confirmation of Appointment of Class and Subclass Representatives. As set forth in the Preliminary Order, the Court confirms the appointment of Shawn Wooden and Kevin Turner as Class Representatives and Shawn Wooden as Subclass 1 Representative and Kevin Turner as Subclass 2 Representative.

6. Confirmation of Appointments of Co-Lead Class Counsel, Class Counsel and Subclass Counsel. Pursuant to Fed. R. Civ. P. 23(g), the Court confirms the appointment of Christopher A. Seeger, Sol Weiss, Steven C. Marks, Gene Locks, Arnold Levin and Dianne M. Nast as Class Counsel. In addition, the appointment of Christopher A. Seeger and Sol Weiss as Co-Lead Class Counsel is confirmed, and the appointments of Arnold Levin and Dianne M. Nast as Subclass Counsel for Subclasses 1 and 2, respectively, are confirmed. Co-Lead Class Counsel, Class Counsel and Subclass Counsel are familiar with the claims in this case and have done work investigating the claims. They have consulted with other counsel in the case and have experience in handling class actions and other complex litigation. They have knowledge of the applicable laws and the resources to commit to the representation of Settlement Class Members and the Settlement Class and Subclasses.

7. Approval of Class Action Settlement. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement Agreement in its entirety (including, without limitation, the NFL Parties' payment obligations, as set forth in Article XXIII of the Settlement Agreement, the Releases provided for therein, and the dismissal with prejudice of claims against the NFL Parties) and finds that the Settlement Agreement is fair, reasonable and adequate. The Court also finds that the Settlement Agreement is fair, reasonable and adequate, and in the best interests of, the Class and Subclass Representatives and all Settlement Class Members, including, without limitation, the members of the Subclasses.

The Parties are ordered to implement, perform and consummate each of the obligations set forth in the Settlement Agreement in accordance with its terms and

provisions. All objections to the Settlement Agreement are found to be without merit and are overruled.

8. Dismissal of Class Action Complaint. The Class Action Complaint is hereby dismissed with prejudice, without further costs, including claims for interest, penalties, costs and attorneys' fees, except that Class Counsel's motion for an award of class attorneys' fees and reasonable incurred costs, as contemplated by the Parties in Section 21.1 of the Settlement Agreement, will be made at an appropriate time to be determined by the Court.

9. Dismissal of Released Claims. As set forth in Article XVIII of the Settlement Agreement, the Settlement Class, the Class and Subclass Representatives and each Settlement Class Member, on his or her own behalf and on behalf of his or her respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, heirs, next of kin, estates, beneficiaries, executors, administrators, and any natural, legal, or juridical person or entity to the extent he, she, or it is entitled to assert any claim on behalf of any Settlement Class Member (the "Releasors"), have waived and released, forever discharged and held harmless the Released Parties, and each of them:

- a. Of and from any and all past, present and future claims, counterclaims, actions, rights or causes of action, liabilities, suits, demands, damages, losses, payments, judgments, debts, dues, sums of money, costs and expenses (including, without limitation, attorneys' fees and costs), accounts, reckonings, bills, covenants, contracts, controversies, agreements, obligations, or promises, in law or in equity, contingent or non-contingent, known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, in any forum that the Releasors, and each of them, had, has, or may have in the future arising out of, in any way relating to or in connection with the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, referred to or relating to the Class Action Complaint and/or Related Lawsuits

(“Claims”), including, without limitation, the Claims identified in Section 18.1(a)(i)-(viii) of the Settlement Agreement.

- b. Of and from any and all Claims, including unknown Claims, arising from, relating to, or resulting from the reporting, transmittal of information, or communications between or among the NFL Parties, Counsel for the NFL Parties, the Special Master, Claims Administrator, Lien Resolution Administrator, any Governmental Payor and/or Medicare Part C or Part D Program sponsor, regarding any claim for benefits under this Settlement Agreement, including any consequences in the event that this Settlement Agreement impacts, limits, or precludes any Settlement Class Member’s right to benefits under Social Security or from any Governmental Payor or Medicare Part C or Part D Program sponsor.
- c. Of and from any and all Claims, including unknown Claims, pursuant to the MSP Laws, or other similar causes of action, arising from, relating to, or resulting from the failure or alleged failure of any of the Released Parties to provide for a primary payment or appropriate reimbursement to a Governmental Payor or Medicare Part C or Part D Program sponsor with a Lien in connection with claims for medical items, services, and/or prescription drugs provided in connection with compensation or benefits claimed or received by a Settlement Class Member pursuant to this Settlement Agreement.
- d. And the Special Master, BAP Administrator, Claims Administrator, and their respective officers, directors, and employees, of and from any and all Claims, including unknown Claims, arising from, relating to, or resulting from their participation, if any, in the BAP, including, but not limited to, Claims for negligence, medical malpractice, wrongful or delayed diagnosis, personal injury, bodily injury (including disease, trauma, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life), or death arising from, relating to, or resulting from such participation.

Accordingly, the Court hereby orders the dismissal with prejudice of all Released Claims by the Releasors against the Released Parties pending in the Court and without further costs, including claims for interest, penalties, costs and attorneys’ fees. All Releasors with Released Claims pending in any other federal court, state court, arbitration, regulatory agency, or

other tribunal or forum, other than the Court, against the Released Parties are ordered to promptly dismiss with prejudice all such Released Claims, and without further costs, including claims for interest, penalties, costs, and attorneys' fees. This Settlement Agreement will be the exclusive remedy for any and all Released Claims by or on behalf of any and all Releasors against any of the Released Parties, and no Releasor shall recover, directly or indirectly, any sums from any Released Parties for Released Claims other than those received for Released Claims under the terms of the Settlement Agreement, if any. However, nothing contained in the Settlement Agreement, including the Release and Covenant Not to Sue provisions in Article XVIII, affects the rights of Settlement Class Members to pursue claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits. Nor does the Settlement Agreement alter the showing that Settlement Class Members must demonstrate to pursue successful claims for workers' compensation and/or successful claims alleging entitlement to NFL CBA Medical and Disability Benefits, nor does it alter the defenses to such claims available to Released Parties except as set forth in ARTICLE XXIX.

10. Dismissal of Related Lawsuits. All Related Lawsuits pending in the Court are hereby dismissed with prejudice, without further costs, including claims for interest, penalties, costs and attorneys' fees. All Releasors with Related Lawsuits pending in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum, other than the Court, are ordered to promptly dismiss with prejudice such Related Lawsuits, and without further costs, including claims for interest, penalties, costs, and attorneys' fees.

11. Covenant Not to Sue. Consistent with Section 18.4 of the Settlement Agreement, the Class and Subclass Representatives, each Settlement Class Member, and the Settlement Class, on behalf of the Releasors, and each of them, are hereby barred, enjoined and

restrained from, at any time, continuing to prosecute, commencing, filing, initiating, instituting, causing to be instituted, assisting in instituting, or permitting to be instituted on their, his, her, or its behalf, or on behalf of any other individual or entity, any proceeding: (i) alleging or asserting any of his or her respective Released Claims against the Released Parties in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, including, without limitation, the Claims set forth in Article XVIII of the Settlement Agreement; or (ii) challenging the validity of the Releases. To the extent any such proceeding exists in any court, tribunal or other forum as of the Effective Date, the Releasors are ordered to withdraw and seek dismissal with prejudice of such proceeding forthwith.

12. Complete Bar Order and Judgment Reduction. It is ordered that any person or entity, other than Riddell (as defined in the Settlement Agreement), that becomes liable to any Releasor, or to any other alleged tortfeasor, co-tortfeasor, co-conspirator or co-obligor, by reason of judgment or settlement, for any claims that are or could have been asserted in this Action or in any Related Lawsuit, or that arise out of or relate to any claims that are or could have been asserted in this Action or in any Related Lawsuit, or that arise out of or relate to any facts in connection with this Action or any Related Lawsuit (collectively, the “Barred Defendants”), are hereby permanently BARRED, ENJOINED and RESTRAINED from commencing, prosecuting, or asserting any claim for contribution or indemnity (whether styled as a claim for contribution, indemnity or otherwise) against the Released Parties that seeks to recover from the Released Parties any part of any judgment entered against the Barred Defendants and/or any settlement reached with any of the Barred Defendants, in connection with any claims that are or could have been asserted against the Barred Defendants in this Action or in any Related Lawsuit or that arise out of or relate to any claims that are or could have been

asserted in this Action or in any Related Lawsuit, or that arise out of or relate to any facts in connection with this Action or any Related Lawsuit, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in this Action, in any Related Lawsuit, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere.

It is further ordered that the Released Parties are hereby permanently BARRED, ENJOINED AND RESTRAINED from commencing, prosecuting, or asserting any claim for contribution or indemnity (whether styled as a claim for contribution, indemnity or otherwise) against any of the Barred Defendants that seeks to recover any part of the NFL Parties' payment obligations as set forth in Article XXIII of the Settlement Agreement, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in this Action, in any Related Lawsuit, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere.

It is further ordered that any judgment or award obtained by the Releasors against any such Barred Defendant shall be reduced by the amount or percentage, if any, necessary under applicable law to relieve the Released Parties of all liability to such Barred Defendants on claims barred pursuant to this Paragraph 12. Such judgment reduction, partial or complete release, settlement credit, relief, or setoff, if any, shall be in an amount or percentage sufficient under applicable law to compensate such Barred Defendants for the loss of any such barred claims pursuant to this Paragraph 12 against the Released Parties.

13. No Release for Insurance Coverage. Notwithstanding anything to the contrary in this Final Order and Judgment, this Final Order and Judgment and the Settlement

Agreement are not intended to and do not effect a release of any rights or obligations that any insurer has under or in relation to any contract or policy of insurance to any named insured, insured, additional insured, or other insured person or entity thereunder, including those persons or entities referred to in Section 2.1(bbbb)(i)-(ii) of the Settlement Agreement.

14. Riddell. As set forth in the Settlement Agreement, it is hereby ordered that, with respect to any litigation by the Releasors against Riddell, if a verdict in a Releasor's favor results in verdict or judgment for contribution or indemnity against any of the Released Parties, the Releasors shall not enforce their right to collect this verdict or judgment to the extent that such enforcement creates liability against such Released Parties. In such event, the Releasors shall reduce their claim or agree to a judgment reduction or satisfy the verdict or judgment to the extent necessary to eliminate the claim of liability against the Released Parties or any Other Party claiming contribution or indemnity.

15. Confirmation of Administrative Appointments. As set forth in the Preliminary Order, the Court confirms the appointment of The Garretson Resolution Group, Inc. as the BAP Administrator, BrownGreer PLC as the Claims Administrator, The Garretson Resolution Group, Inc. as the Liens Resolution Administrator and Citibank, N.A. as the Trustee, and confirms that the Court retains continuing jurisdiction over those appointed. Pursuant to Federal Rule of Civil Procedure 53 and the inherent authority of the Court, the Court appoints _____ as Special Master to perform the duties of the Special Master as set forth in the Settlement Agreement for a five-year term.

16. No Admission. This Final Order and Judgment, the Settlement Agreement, and the documents relating thereto, and any actions taken by the NFL Parties or the Released Parties in the negotiation, execution, or satisfaction of the Settlement Agreement: (a)

do not and shall not, in any event, constitute, or be construed as, an admission of any liability or wrongdoing, or recognition of the validity of any claim made by the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member in this or any other action or proceeding; and (b) shall not, in any way, be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, of any kind, or used in any other fashion, by the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member, Class Counsel, or any of the Released Parties in any litigation, action, hearing, or any judicial, arbitral, administrative, regulatory or other proceeding for any purpose, except a proceeding to resolve a dispute arising under, or to enforce, the Settlement Agreement. Without limiting the foregoing, neither the Settlement Agreement nor any of its provisions, negotiations, statements, or court proceedings relating to its provisions, nor any actions undertaken in this Settlement Agreement, will be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, or admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, or as a waiver by the Released Parties of any applicable defense, or as a waiver by the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member, of any claims, causes of action, or remedies. This Paragraph shall not apply to disputes between the NFL Parties and their insurers, as to which the NFL Parties reserve all rights.

17. Modification of the Settlement Agreement. Without further approval from the Court, and without the express written consent of Class Counsel and Counsel for the NFL Parties, on behalf of all Parties, the Settlement Agreement will not be subject to any change, modification, amendment, or addition.

18. Binding Effect. The terms of the Settlement Agreement and of this Final Order and Judgment shall be forever binding on the Parties (regardless of whether or not any individual Settlement Class Member receives payment of a Monetary Award or Derivative Claimant Award or participates in a BAP baseline assessment examination), as well as their respective heirs, executors, administrators, predecessors, successors, affiliates and assigns. The Opt Outs listed in Exhibit [] hereto are excluded from the Settlement Class pursuant to request and are not bound by the terms of the Settlement Agreement or this Final Order and Judgment.

19. Termination. If the Settlement Agreement is terminated as provided in Article XVI of the Settlement Agreement, then this Final Order and Judgment (and any orders of the Court relating to the Settlement Agreement) shall be null and void and be of no further force or effect, except as otherwise provided by the Settlement Agreement, and any unspent and uncommitted monies in the Funds will revert to, and shall be paid to, the NFL Parties within ten (10) days.

20. Entry of Final Judgment. There is no just reason to delay the entry of this Final Order and Judgment as a final judgment in this Action. Accordingly, the Clerk of Court is hereby directed, in accordance with this Final Order and Judgment and pursuant to Fed. R. Civ. P. 54, to: (i) enter final judgment dismissing with prejudice this Action and any Related Lawsuits in this Court in which Released Parties (or any of them) are the only defendants, and (ii) enter final judgment dismissing with prejudice all Released Claims asserted against Released Parties

(or any of them) in any other Related Lawsuits in this Court in which there are named defendants other than Released Parties.

SO ORDERED this _____ day of _____, 2014.

Anita B. Brody
United States District Court Judge

EXHIBIT A-5

NFL Concussion Settlement

All Valid Claims of Retired NFL Football Players to be Paid in Full for 65 Years

Monetary Awards, Baseline Medical Exams and Other Benefits Provided

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- The National Football League (“NFL”) and NFL Properties LLC (collectively, “NFL Parties”) have agreed to a Settlement of a class action lawsuit seeking medical monitoring and compensation for brain injuries allegedly caused by head impacts experienced in NFL football. The NFL Parties deny that they did anything wrong.
- The Settlement Class includes all retired players of the NFL, the American Football League (“AFL”) that merged with the NFL, the World League of American Football, NFL Europe League, and NFL Europa League, as well as immediate family members of retired players and legal representatives of incapacitated, incompetent or deceased retired players.
- The Settlement will provide eligible retired players with:
 - Baseline neuropsychological and neurological exams to determine if retired players are: a) currently suffering from any neurocognitive impairment, including impairment serious enough for compensation, and b) eligible for additional testing and/or treatment (\$75 million);
 - Monetary awards for diagnoses of ALS (Lou Gehrig’s disease), Parkinson’s Disease, Alzheimer’s Disease, early and moderate Dementia and certain cases of chronic traumatic encephalopathy (CTE) (a neuropathological finding) diagnosed after death. The maximum monetary awards range from \$1.5 million to \$5 million depending on the diagnosis. There is no cap on the amount of funds available to pay these Monetary Awards and all valid claims will be paid in full for 65 years; and
 - Education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL’s medical and disability programs and other educational programs and initiatives (\$10 million).
- Individuals who represent incapacitated, incompetent or deceased retired players, or family members who meet certain criteria may also file claims for monetary awards (*see* Question 6).
- To get money, proof that injuries were caused by playing NFL football is not required.
- **Settlement Class Members will need to register to get benefits. Settlement Class Members may sign up at the website for additional information about the Settlement and updates on the registration process.**
- Your legal rights are affected even if you do nothing. Please read this Notice carefully.

| YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT | |
|--|--|
| STAY IN THE SETTLEMENT CLASS | You do not need to do anything to be included in the Settlement Class. However, once the Court approves the Settlement, you will be bound by the terms and releases contained in the Settlement. There will be later notice to explain when and how to register for Settlement benefits (<i>see</i> Question 26). |
| ASK TO BE EXCLUDED | You will get no benefits. This is the only option that allows you to participate in any other lawsuit against the NFL Parties about the claims in this case (<i>see</i> Question 30). |

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

| | |
|---------------|---|
| OBJECT | Write to the Court if you do not like the Settlement (<i>see</i> Question 35). |
|---------------|---|

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement.
- **This Notice is only a summary of the Settlement Agreement and your rights. You are encouraged to carefully review the complete Settlement Agreement at www.NFLConcussionSettlement.com.**

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

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QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

CHAPTER 1: INTRODUCTION

BASIC INFORMATION

1. Why is this Notice being provided?

The Court in charge of this case authorized this Notice because you have a right to know about the proposed Settlement of this lawsuit and about all of your options before the Court decides whether to give final approval to the Settlement. This Notice summarizes the Settlement and explains your legal rights and options.

Judge Anita B. Brody of the United States District Court for the Eastern District of Pennsylvania is overseeing this case. The case is known as *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323. The people who sued are called the "Plaintiffs." The National Football League and NFL Properties LLC are called the "NFL Defendants."

The Settlement may affect your rights if you are: (a) a retired player of the NFL, AFL, World League of American Football, NFL Europe League, or NFL Europa League, (b) an authorized representative of a deceased or legally incapacitated or incompetent retired player of those leagues, or (c) an individual with a close legal relationship with a retired player of those leagues, such as a spouse, parent or child.

2. What is the litigation about?

The Plaintiffs claim that retired players experienced head trauma during their NFL football playing careers that resulted in brain injuries, which have caused or may cause them long-term neurological problems. The Plaintiffs accuse the NFL Parties of being aware of the evidence and the risks associated with repetitive traumatic brain injuries but failing to warn and protect the players against the long-term risks, and ignoring and concealing this information from the players. The NFL Parties deny the claims in the litigation.

3. What is a class action?

In a class action, one or more people, the named plaintiffs (who are also called proposed "class representatives") sue on behalf of themselves and other people with similar claims. All of these people together are the proposed "class" or "class members." When a class action is settled, one court resolves the issues for all class members (in the settlement context, "settlement class members"), except for those who exclude themselves from the settlement. In this case, the proposed class representatives are Kevin Turner and Shawn Wooden. Excluding yourself means that you will not receive any benefits from the Settlement. The process for excluding yourself is described in Question 30 of this Notice.

4. Why is there a Settlement?

After extensive settlement negotiations mediated by retired United States District Court Judge Layn Phillips, and further settlement negotiations under the supervision of the Court-appointed Special Master, Perry Golkin, the Plaintiffs and the NFL Parties agreed to the Settlement.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

A settlement is an agreement between a plaintiff and a defendant to resolve a lawsuit. Settlements conclude litigation without the court or a jury ruling in favor of the plaintiff or the defendant. A settlement allows the parties to avoid the cost and risk of a trial, as well as the delays of litigation.

If the Court approves this Settlement, the claims of all persons affected (*see* Question 6) and the litigation between these persons and the NFL Parties are over. The persons affected by the Settlement are eligible for the benefits summarized in this Notice and the NFL Parties will no longer be legally responsible to defend against the claims made in this litigation.

The Court has not and will not decide in favor of the retired players or the other persons affected by the Settlement or the NFL Parties, and by reviewing this Settlement the Court is not making and will not make any findings that any law was broken or that the NFL Parties did anything wrong.

The proposed Class Representatives and their lawyers (“Co-Lead Class Counsel,” “Class Counsel,” and “Subclass Counsel,” *see* Question 33) believe that the proposed Settlement is best for everyone who is affected. The factors that Co-Lead Class Counsel, Class Counsel, and Subclass Counsel considered included the uncertainty and delay associated with continued litigation, a trial and appeals, and the uncertainty of particular legal issues that are yet to be determined by the Court. Co-Lead Class Counsel, Class Counsel and Subclass Counsel balanced these and other substantial risks in determining that the Settlement is fair, reasonable and adequate in light of all circumstances and in the best interests of the Settlement Class Members.

The Settlement Agreement is available at www.NFLConcussionSettlement.com. The Settlement Agreement is also on file with the Clerk of the Court for the Eastern District of Pennsylvania (*see* Question 35 for the address). You can also get this information by calling 1-800-000-0000.

5. What are the benefits of the Settlement?

Under the Settlement, the NFL Parties will pay to fund:

- Baseline neuropsychological and neurological examinations for eligible retired players, and additional medical testing, counseling and/or treatment if they are diagnosed with moderate cognitive impairment during the baseline examinations (up to \$75 million, “Baseline Assessment Program”) (*see* Questions 11-13);
- Monetary awards for diagnoses of ALS, Parkinson’s Disease, Alzheimer’s Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) and Death with CTE prior to [Date of Preliminary Approval Order] (*see* Questions 14-21); **All valid claims under the Settlement, without limitation, will be paid in full throughout the 65-year life of the Settlement (the “Monetary Award Fund”);** and
- Education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL’s medical and disability programs and other educational programs and initiatives (\$10 million) (*see* Question 24).

In addition, the NFL Parties will pay the cost of notifying the Settlement Class. Administrative costs and expenses will be paid out of the Monetary Award Fund. The Baseline Assessment Program costs and expenses will be paid out of the Baseline Assessment Program Fund.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

The details of the Settlement benefits are in the Settlement Agreement, which is available at www.NFLConcussionSettlement.com. The Settlement Agreement is also on file with the Clerk of the Court for the Eastern District of Pennsylvania (*see* Question 35 for the address). You can also get this information by calling 1-800-000-0000.

Note: The Baseline Assessment Program and Monetary Award Fund are completely independent of the NFL Parties and any benefit programs that have been created between the NFL and the NFL Players Association. The NFL Parties are not involved in determining the validity of claims.

WHO IS PART OF THE SETTLEMENT?

You need to decide whether you are included in the Settlement.

6. Who is included in the Settlement Class?

This Settlement Class includes three types of people:

Retired NFL Football Players: Prior to [Date of Preliminary Approval Order], all living NFL Football players who (1) have retired, formally or informally, from playing professional football with the NFL or any Member Club, including AFL, World League of American Football, NFL Europe League, and NFL Europa League players, or (2) were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and no longer are under contract to a Member Club and are not seeking active employment as a player with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club.

Representative Claimants: An authorized representative, ordered by a court or other official of competent jurisdiction under applicable state law, of a deceased or legally incapacitated or incompetent Retired NFL Football Player.

Derivative Claimants: A spouse, parent, dependent child, or any other person who properly under applicable state law asserts the right to sue independently or derivatively by reason of his or her relationship with a living or deceased Retired NFL Football Player. (For example, a spouse asserting the right to sue due to the injury of a husband who is a Retired NFL Football Player.)

The Settlement recognizes two separate groups (“Subclasses”) of Settlement Class Members based on the Retired NFL Football Player’s injury status as of [Date of Preliminary Approval Order]:

- **Subclass 1** includes: Retired NFL Football Players who were not diagnosed with ALS, Parkinson’s Disease, Alzheimer’s Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) or Death with CTE prior to [Date of Preliminary Approval Order], and their Representative Claimants and Derivative Claimants.
- **Subclass 2** includes:
 - Retired NFL Football Players who were diagnosed with ALS, Parkinson’s Disease, Alzheimer’s Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), or Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) prior to [Date of Preliminary Approval Order], and their Representative Claimants and Derivative Claimants; and

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

- Representative Claimants of deceased Retired NFL Football Players who were diagnosed with ALS, Parkinson's Disease, Alzheimer's Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), or Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia) prior to death or who died prior to [Date of Preliminary Approval Order] and received a diagnosis of Death with CTE.

7. What players are not included in the Settlement Class?

The Settlement Class does not include: (a) current NFL players, and (b) people who tried out for NFL or AFL Member Clubs, or World League of American Football, NFL Europe League or NFL Europa League teams, but did not make it onto preseason, regular season or postseason rosters, or practice squads, developmental squads or taxi squads.

8. What if I am not sure whether I am included in the Settlement Class?

If you are not sure whether you are included in the Settlement Class, you may call **1-800-000-0000** with questions or visit www.NFLConcussionSettlement.com. You may also write with questions to NFL Concussion Settlement, P.O. Box 0000, City, ST 00000. You may also consult with your own attorney.

9. What are the different levels of neurocognitive impairment?

In addition to ALS, Parkinson's Disease, and Alzheimer's Disease, various levels of neurocognitive impairment are covered by this Settlement. More details can be found in the Injury Definitions, which are available at www.NFLConcussionSettlement.com or by calling **1-800-000-0000**.

The level of Neurocognitive Impairment will be established in part with evidence of decline in performance in at least two areas subject to clinical evaluative testing (complex attention, executive function, learning and memory, language, or perceptual-spatial), provided one of the areas is executive function, learning and memory, or complex attention, and related functional impairment as follows:

| LEVEL OF NEUROCOGNITIVE IMPAIRMENT | TYPE OF IMPAIRMENT | DEGREE OF DECLINE |
|---|-------------------------------|--------------------------------------|
| Level 1 | Moderate cognitive impairment | Moderate cognitive decline |
| Level 1.5 | Early Dementia | Moderate to severe cognitive decline |
| Level 2 | Moderate Dementia | Severe cognitive decline |

If neurocognitive impairment is temporary and only occurs with delirium, or as a result of substance abuse or medicinal side effects, it is not covered by the Settlement.

10. Must a retired player be vested under the NFL Retirement Plan to receive Settlement benefits?

No. A retired player can be a Settlement Class Member regardless of whether he is vested due to credited seasons or total and permanent disability under the Bert Bell/Pete Rozelle NFL Player Retirement Plan.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

CHAPTER 2: SETTLEMENT BENEFITS

THE BASELINE ASSESSMENT PROGRAM

11. What is the Baseline Assessment Program (“BAP”)?

All living retired players who have earned at least one-half of an Eligible Season (*see* Question 18), who do not exclude themselves from the Settlement (*see* Question 30), and who timely register to participate in the Settlement (*see* Question 26) may participate in the Baseline Assessment Program (“BAP”).

The BAP will provide baseline neuropsychological and neurological assessment examinations to determine whether retired players are currently suffering from cognitive impairment. Retired players will have from two to ten years, depending on their age as of the date the Settlement is finally approved and any appeals are fully resolved (“Final Settlement Approval”), to have a baseline examination conducted through a nationwide network of qualified and independent medical providers.

- Retired players 43 or older as of the date the Settlement goes into effect will need to have a baseline examination within two years of the start of the BAP.
- Retired players under the age of 43 as of the date the Settlement goes into effect will need to have a baseline examination within 10 years of the start of the BAP, or before they turn 45, whichever comes sooner.

Retired players who are diagnosed with Level 1 Neurocognitive Impairment (*i.e.*, moderate cognitive impairment) are eligible to receive further medical testing and/or treatment (including counseling and pharmaceuticals) for that condition during the ten-year term of the BAP or within five years from diagnosis, whichever is later.

Retired players who participate in the BAP will be encouraged to provide their confidential medical records for use in research into cognitive impairment and safety and injury prevention with respect to football players.

Although all retired players are encouraged to take advantage of the BAP and receive a baseline examination, they do not need to participate in the BAP to receive a monetary award, but any award to the retired player may be reduced by 10% if the retired player does not participate in the BAP, as explained in more detail in Question 20.

12. Why should a retired player get a BAP baseline examination?

Getting a BAP baseline examination will be beneficial. It will determine whether the retired player has any cognitive impairment. If he is diagnosed with Level 1 Neurocognitive Impairment (*i.e.*, moderate cognitive impairment), he will be eligible to receive further medical testing and/or treatment for that condition. In addition, regardless of any cognitive impairment today, the results of the BAP baseline examination can be used as a comparison to measure any subsequent deterioration of cognitive condition over the course of his life. Participants also will be examined by at least two experts during the BAP baseline examinations, a neuropsychologist and a neurologist, and the retired player and/or his family members will have the opportunity to ask questions relating to any cognitive impairment during those examinations.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

Participation in the BAP does not prevent the retired player from filing a claim for a monetary award. For the next 65 years, retired players will be eligible for compensation paid from the Monetary Award Fund if the player develops a Qualifying Diagnosis (*see* Question 14). Participation in the BAP also will help ensure that, to the extent the retired player receives a Qualifying Diagnosis in the future, he will receive the maximum monetary award to which he is entitled (*see* Question 20).

13. How does a retired player schedule a baseline assessment examination and where will it be done?

Retired players need to register for Settlement benefits before they can get a baseline assessment examination. Registration for benefits will not be available until after Final Settlement Approval. **However, a retired player may provide his name and contact information now at www.NFLConcussionSettlement.com or by calling 1-800-000-0000. This ensures that the retired player will receive additional notice about the registration process and deadlines when it becomes available.**

The BAP Administrator will send notice to those retired players determined during registration to be eligible for the BAP, explaining how to arrange for an initial baseline assessment examination. The BAP will use a nationwide network of qualified and independent medical providers who will provide both the initial baseline assessment as well as any further testing and/or treatment. The BAP Administrator, which will be appointed by the Court, will establish the network of medical providers.

MONETARY AWARDS

14. What diagnoses qualify for monetary awards?

Monetary awards are available for the diagnosis of ALS, Parkinson's Disease, Alzheimer's Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia), or Death with CTE (the "Qualifying Diagnoses"). A Qualifying Diagnosis may occur at any time until the end of the 65-year term of the Monetary Award Fund.

If a retired player receives a monetary award based on a Qualifying Diagnosis, and later is diagnosed with a different Qualifying Diagnosis that entitles him to a larger monetary award than his previous award, he will be eligible for an increase in compensation. This would also apply to Derivative Claimants.

Qualifying Diagnoses must be made by approved qualified specialists. If and when Final Settlement Approval is obtained, the Claims Administrator will create and maintain a list of specialists who may make an authorized Qualifying Diagnoses if no such diagnosis has already been made by a qualified specialist before the Settlement is effective.

15. Do I need to prove that playing professional football caused the retired player's Qualifying Diagnosis?

No. You do not need to prove that a retired player's Qualifying Diagnosis was caused by playing professional football or that he experienced head injuries in the NFL, AFL, World League of American Football, NFL Europe League, or NFL Europa League in order to receive a monetary award. The fact that a retired player receives a Qualifying Diagnosis is sufficient to be eligible for a monetary award.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

You also do not need to exclude the possibility that the Qualifying Diagnosis was caused or contributed to by amateur football or other professional football league injuries or by various risk factors linked to the Qualifying Diagnosis.

16. How much money will I receive?

The amount of money you will receive depends on the retired player's:

- Specific Qualifying Diagnosis,
- Age at the time of diagnosis (*see* Question 17),
- Number of seasons played or practiced in the NFL or the AFL (*see* Question 18),
- Diagnosis of a prior stroke or traumatic brain injury (*see* Question 19), and
- Participation in a baseline assessment exam (*see* Question 20).

The amount of money you will receive also depends on whether:

- There are any legally enforceable liens on the award,
- Any retainer agreement with an attorney, and
- The Court makes any further assessments (*see* Question 34).

Certain costs and expenses related to resolving any liens for Settlement Class Members will be paid out of such Settlement Class Members' Monetary Awards or Derivative Claimant Awards.

The table below lists the maximum amount of money available for each Qualifying Diagnosis before any adjustments are made.

| QUALIFYING DIAGNOSIS | MAXIMUM AWARD AVAILABLE |
|---|--------------------------------|
| Amyotrophic lateral sclerosis (ALS) | \$5 million |
| Death with CTE (diagnosed after death) | \$4 million |
| Parkinson's Disease | \$3.5 million |
| Alzheimer's Disease | \$3.5 million |
| Level 2 Neurocognitive Impairment (<i>i.e.</i> , moderate Dementia) | \$3 million |
| Level 1.5 Neurocognitive Impairment (<i>i.e.</i> , early Dementia) | \$1.5 million |

Monetary awards may be increased up to 2.5% per year during the 65-year Monetary Award Fund term for inflation.

To receive the maximum amount outlined in the table, a retired player must have played for at least five Eligible Seasons (*see* Question 18) and have been diagnosed when younger than 45 years old.

Derivative Claimants are eligible to be compensated from the monetary award of the retired player with whom they have a close relationship in an amount of 1% of that award. If there are multiple Derivative Claimants for the same retired player, the 1% award will be divided among the Derivative Claimants according to the law where the retired player (or his Representative Claimant, if any) resides.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

17. How does the age of the retired player at the time of first diagnosis affect a monetary award?

Awards are reduced for retired players who were 45 or older when diagnosed. The younger a retired player is at the time of diagnosis, the greater the award he will receive. Setting aside the other downward adjustments to monetary awards, the table below provides:

- The average award for people diagnosed between the ages of 45-79; and
- The amount of the award for those under age 45 and over 79.

The actual amount will be determined based on each retired player's actual age at the time of diagnosis and on other potential adjustments.

| AGE AT DIAGNOSIS | ALS | DEATH w/CTE | PARKINSON'S | ALZHEIMER'S | LEVEL 2 | LEVEL 1.5 |
|------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Under 45 | \$5,000,000 | \$4,000,000 | \$3,500,000 | \$3,500,000 | \$3,000,000 | \$1,500,000 |
| 45 - 49 | \$4,500,000 | \$3,200,000 | \$2,470,000 | \$2,300,000 | \$1,900,000 | \$950,000 |
| 50 - 54 | \$4,000,000 | \$2,300,000 | \$1,900,000 | \$1,600,000 | \$1,200,000 | \$600,000 |
| 55 - 59 | \$3,500,000 | \$1,400,000 | \$1,300,000 | \$1,150,000 | \$950,000 | \$475,000 |
| 60 - 64 | \$3,000,000 | \$1,200,000 | \$1,000,000 | \$950,000 | \$580,000 | \$290,000 |
| 65 - 69 | \$2,500,000 | \$980,000 | \$760,000 | \$620,000 | \$380,000 | \$190,000 |
| 70 - 74 | \$1,750,000 | \$600,000 | \$475,000 | \$380,000 | \$210,000 | \$105,000 |
| 75 - 79 | \$1,000,000 | \$160,000 | \$145,000 | \$130,000 | \$80,000 | \$40,000 |
| 80+ | \$300,000 | \$50,000 | \$50,000 | \$50,000 | \$50,000 | \$25,000 |

Note: The age of the retired player at diagnosis (not the age when applying for a monetary award) is used to determine the monetary amount awarded.

18. How does the number of seasons a retired player played affect a monetary award?

Awards are reduced for retired players who played less than five "Eligible Seasons." The Settlement uses the term "Eligible Season" to count the seasons in which a retired player played or practiced in the NFL or AFL. A retired player earns an Eligible Season for:

- Each season where he was on an NFL or AFL Member Club's "Active List" for either three or more regular season or postseason games, or
- Where he was on an Active List for one or more regular or postseason games and then spent two regular or postseason games on an injured reserve list or inactive list due to a concussion or head injury.
- A retired player also earns one-half of an Eligible Season for each season where he was on an NFL or AFL Member Club's practice, developmental, or taxi squad for at least eight games, but did not otherwise earn an Eligible Season.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

The “Active List” means the list of all players physically present, eligible and under contract to play for an NFL or AFL Member Club on a particular game day within any applicable roster or squad limits in the applicable NFL or AFL Constitution and Bylaws.

Time spent playing or practicing in the World League of American Football, NFL Europe League, and NFL Europa League does not count towards an Eligible Season.

The table below lists the reductions to a retired player’s (or his Representative Claimant’s) monetary award if the retired player has less than five Eligible Seasons. To determine the total number of Eligible Seasons credited to a retired player, add together all of the earned Eligible Seasons and half Eligible Seasons. For example, if a retired player earned two Eligible Seasons and three half Eligible Seasons, he will be credited with 3.5 Eligible Seasons.

| NUMBER OF ELIGIBLE SEASONS | PERCENTAGE OF REDUCTION |
|----------------------------|-------------------------|
| 4.5 | 10% |
| 4 | 20% |
| 3.5 | 30% |
| 3 | 40% |
| 2.5 | 50% |
| 2 | 60% |
| 1.5 | 70% |
| 1 | 80% |
| .5 | 90% |
| 0 | 97.5% |

19. How do prior strokes or traumatic brain injuries of a retired player affect a monetary award?

It depends. A retired player’s monetary award (or his Representative Claimant monetary award) will be reduced by 75% if he experienced: (1) a medically diagnosed stroke that occurred before or after the time the retired player played NFL football, but before he received a Qualifying Diagnosis; or (2) a severe traumatic brain injury unrelated to NFL football that occurred during or after the time the retired player played NFL football, but before he received a Qualifying Diagnosis.

The award will not be reduced if the retired player (or his Representative Claimant) can show by clear and convincing evidence that the stroke or traumatic brain injury is not related to the Qualifying Diagnosis.

20. How is a retired player’s monetary award affected if he does not participate in the BAP program?

It depends on when the retired player receives his Qualifying Diagnosis and the nature of the diagnosis. There is a 10% reduction to the monetary award if the retired player does not participate in the BAP and:

- Did not receive a Qualifying Diagnosis prior to [Date of Preliminary Approval Order], and

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

- Receives a Qualifying Diagnosis (other than ALS) after his deadline to receive a BAP baseline assessment examination.

21. Can I receive a monetary award even though the retired player is dead?

Yes. Representative Claimants for deceased retired players with a Qualifying Diagnoses will be eligible to receive monetary awards. If the deceased retired player died before January 1, 2006, however, the Representative Claimant will only receive a monetary award if the Court determines that a wrongful death or survival claim is allowed under applicable state law.

Derivative Claimants also will be eligible for a total award of 1% of the monetary award that the Representative Claimant for the deceased retired player receives (*see* Question 16).

Representative and Derivative Claimants will also need to register for Settlement benefits (*see* Question 26).

22. Will this Settlement affect a retired player's participation in NFL or NFLPA-related benefits programs?

No. The Settlement benefits are completely independent of any benefits programs that have been created by or between the NFL and the NFL Players Association. This includes the 88 Plan (Article 58 of the 2011 Collective Bargaining Agreement) and the Neuro-Cognitive Disability Benefit (Article 65 of the 2011 Collective Bargaining Agreement).

Note: The Settlement ensures that a retired player who has signed, or will sign, a release as part of his Neuro-Cognitive Disability Benefit application, will not be denied Settlement benefits.

23. Will this Settlement prevent retired players from bringing workers' compensation claims?

No. Claims for workers' compensation will not be released by this Settlement.

EDUCATION FUND

24. What type of education programs are supported by the Settlement?

The Settlement will provide \$10 million in funding to support education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL's medical and disability programs and other educational programs and initiatives.

Retired players will be able to actively participate in such initiatives if they desire.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

CHAPTER 3: YOUR RIGHTS

REMAINING IN THE SETTLEMENT

25. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the Settlement, you cannot sue the NFL Parties, the Member Clubs, or related individuals and entities, or be part of any other lawsuit against the NFL Parties about the issues in this case. This means you give up your right to continue to litigate any claims related to this Settlement, or file new claims, in any court or in any proceeding at any time. **However, the Settlement does not release any claims for workers' compensation (see Question 23) or claims alleging entitlement to NFL medical and disability benefits available under the Collective Bargaining Agreement.**

Please note that certain Plaintiffs also sued the football helmet manufacturer Riddell and certain related entities (specifically, Riddell, Inc., Riddell Sports Group Inc., All American Sports Corporation, Easton-Bell Sports, Inc., EB Sports Corp., Easton-Bell Sports, LLC, and RBG Holdings Corp.). **They are not parties to this Settlement and claims against them are not released by this Settlement.**

Article XVIII of the Settlement Agreement contains the complete text and details of what Settlement Class Members give up unless they exclude themselves from the Settlement, so please read it carefully. The Settlement Agreement is available at www.NFLConcussionSettlement.com. The Settlement Agreement is also on file with the Clerk of the Court for the Eastern District of Pennsylvania (see Question 35 for the address). You can also get this information by calling 1-800-000-0000. If you have any questions you can talk to the law firms listed in Question 33 for free or you can talk to your own lawyer if you have questions about what this means.

HOW TO GET BENEFITS

26. How do I get Settlement benefits?

To get benefits, you will need to register. This is true for all Settlement Class Members, including Representative and Derivative Claimants. Registration for benefits will not begin until after Final Settlement Approval (see Question 37). If and when that occurs, further notice will be provided about the registration process and deadlines. **However, you may provide your name and contact information now at www.NFLConcussionSettlement.com or by calling 1-800-000-0000. This ensures that you will receive additional notice about the registration process and deadlines when that becomes available.** To receive any Settlement benefits, you must register on or before 180 days from the date that further notice about the registration process and deadlines is posted on www.NFLConcussionSettlement.com. Information about the registration deadline will also be available by calling **1-800-000-0000**.

27. Is there a time limit for Retired NFL Football Players and Representative Claimants to file claims for monetary awards?

Yes. Retired NFL Football Players and Representative Claimants for retired players who are diagnosed by the date of Final Settlement Approval must submit claims for monetary awards within two years of the date that further notice about the registration process and deadlines is posted on

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

www.NFLConcussionSettlement.com. Retired NFL Football Players and Representative Claimants for retired players who are diagnosed after the date of Final Settlement Approval have two years from the date of diagnosis to file claims. This deadline may be extended to within four years of the Qualifying Diagnosis or the date that further notice about the registration process and deadlines is posted on www.NFLConcussionSettlement.com, whichever is later, if the Retired NFL Football Player or Representative Claimant can show substantial hardship beyond the Qualifying Diagnosis. Derivative Claimants must submit claims no later than 30 days after the Retired NFL Football Player through whom the close relationship is the basis for the claim (or the Representative Claimant of that retired player) receives a notice that he is entitled to a monetary award. All claims must be submitted by the end of the 65-year term of the Monetary Award Fund.

28. Can I re-apply for compensation if my claim is denied?

Yes. A Settlement Class Member who submits a claim for a monetary award that is denied can re-apply in the future should the Retired NFL Football Player's medical condition change.

29. Can I appeal the determination of my monetary award claim?

Yes. The Settlement establishes a process for a Settlement Class Member to appeal the denial of a monetary award claim or the amount of the monetary award.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to receive benefits from this Settlement, and you want to retain the right to sue the NFL Parties about the legal issues in this case, then you must take steps to remove yourself from the Settlement. You may do this by asking to be excluded – sometimes referred to as “opting out” of – the Settlement Class.

30. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must mail a letter or other written document to the Claims Administrator. Your request must include:

- Your name, address, telephone number, and date of birth;
- A copy of your driver's license or other government issued identification;
- A statement that “I wish to exclude myself from the Settlement Class in *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323” (or substantially similar clear and unambiguous language); and
- Your signature by hand (not any form of electronic signature), and the date on which you signed it (even if represented by an attorney).

You must mail your exclusion request, postmarked no later than **Month 00, 0000** [Date ordered by the Court], to:

NFL Concussion Settlement
P.O. Box 0000,
City, ST 00000

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

31. If I do not exclude myself, can I sue the NFL Parties for the same thing later?

No. Unless you exclude yourself, you give up the right to sue the NFL Parties for all of the claims that this Settlement resolves. If you want to maintain your own lawsuit relating to the claims released by the Settlement, then you must exclude yourself by **Month 00, 0000**.

32. If I exclude myself, can I still get benefits from this Settlement?

No. **If you exclude yourself from the settlement you will not get any Settlement benefits.** You will not be eligible to receive a monetary award or participate in the Baseline Assessment Program.

THE LAWYERS REPRESENTING YOU

33. Do I have a lawyer in the case?

The Court has appointed a number of lawyers to represent all Settlement Class Members as “Co-Lead Class Counsel,” “Class Counsel” and “Subclass Counsel” (*see* Question 6). They are listed at the end of this Notice with their contact information.

You will not be charged for contacting these lawyers. If you are represented by an attorney, you may contact your attorney to discuss the proposed Settlement. You do not have to hire your own attorney. However, if you want to be represented by your own lawyer, you may hire one at your own expense.

34. How will the lawyers be paid?

At a later date to be determined by the Court, Co-Lead Class Counsel, Class Counsel and Subclass Counsel will ask the Court for an award of attorneys’ fees and reasonable costs. The NFL Parties have agreed not to oppose or object to the request for attorneys’ fees and reasonable incurred costs if the request does not exceed \$112.5 million. These fees and incurred costs will be paid separately by the NFL Parties and not from the Baseline Assessment Program Fund, Education Fund, or Monetary Award Fund. Settlement Class Members will have an opportunity to comment on and/or object to this request at an appropriate time. Ultimately, the award of attorneys’ fees and reasonable costs to be paid by the NFL Parties is subject to the approval of the Court.

After Final Settlement Approval, Co-Lead Class Counsel may ask the Court to set aside up to five percent of each Monetary Award and Derivative Claimant Award to facilitate the Settlement program and related efforts of Co-Lead Class Counsel, Class Counsel and Subclass Counsel. If approved, this money would be held in a separate fund overseen by the Court. Any future request for a set-aside will describe: (1) the proposed amount; (2) how the money will be used; and (3) any other relevant information. This “set-aside” would come out of the claimant’s attorney’s fee if represented by individual counsel or, if not represented, out of the Monetary Award or Derivative Claimant Award itself. No money will be held back or set aside from any award without a Court order. The set-aside is a matter between Class Counsel and individual counsel for Settlement Class Members. The NFL Parties do not take a position on the proposal.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

OBJECTING TO THE SETTLEMENT

You may tell the Court that you do not agree with the Settlement or some part of it.

35. How do I tell the Court if I do not like the Settlement?

If you do not exclude yourself from the Settlement Class, you may object to the Settlement if you do not like some part of it. The Court will consider your views. To object to the Settlement, you or your attorney must submit your written objection to the Court. The objection must include the following:

- The name of the case and multi-district litigation, *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323;
- Your name, address, telephone number, and date of birth;
- The name of the Retired NFL Football Player through which you are a Representative Claimant or Derivative Claimant (if you are not a retired player);
- Written evidence establishing that you are a Settlement Class Member;
- A detailed statement of your objections, and the specific reasons for each such objection, including any facts or law you wish to bring to the Court's attention;
- Any other supporting papers, materials or briefs that you want the Court to consider in support of your objection; and
- Your signature by hand (not any form of electronic signature), and the date on which you signed it (even if represented by an attorney).

The requirements to object to the Settlement are described in detail in the Settlement Agreement in section 14.3.

You must file your objection with the Court no later than **Month 00, 0000 [date ordered by the Court]**:

| COURT |
|---|
| <p>Clerk of the District Court/NFL Concussion Settlement United States District Court for the Eastern District of Pennsylvania James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1797</p> |

36. What is the difference between objecting to the Settlement and excluding myself?

Objecting is simply telling the Court that you do not like something about the Settlement or want it to say something different. You can object only if you do not exclude yourself from the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and you do

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

not want to receive any Settlement benefits. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to. The Court will determine if you are allowed to speak if you request to do so (*see* Question 39).

37. When and where will the Court hold a Fairness Hearing concerning the Settlement?

The Court will hold the Fairness Hearing at XX:00 x.m. on **Month 00, 0000**, at the United States District Court for the Eastern District of Pennsylvania, located at the James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1797. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.NFLConcussionSettlement.com or call **1-800-000-0000**. At this hearing, the Court will hear evidence about whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them and may elect to listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

The Court will consider the request for attorneys' fees and reasonable costs by Co-Lead Class Counsel, Class Counsel and Subclass Counsel (*see* Question 34) after the Fairness Hearing, which will be set at a later date by the Court.

38. Do I have to attend the hearing?

No. Co-Lead Class Counsel, Class Counsel and Subclass Counsel will answer questions the Court may have. But you are welcome to attend at your own expense. If you timely file an objection, you do not have to come to Court to talk about it. As long as you filed your written objection on time, the Court will consider it. You may also have your own lawyer attend at your expense, but it is not necessary.

39. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. The Court will determine whether to grant you permission to speak. To make such a request, you must file a written notice stating that it is your wish to speak at the *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323 Fairness Hearing. Be sure to include your name, address, telephone number, and your signature. Your request to speak must be filed with the Court no later than **Month 00, 0000** at the address in Question 35.

GETTING MORE INFORMATION

40. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at www.NFLConcussionSettlement.com. The Settlement Agreement is also on file with the Clerk of the Court for the Eastern District of Pennsylvania (*see* Question

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

35 for the address). You also may write with questions to NFL Concussion Settlement, P.O. Box 0000, City, ST 00000 or call **1-800-000-0000**.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR THE NFL PARTIES FOR INFORMATION ABOUT THE SETTLEMENT OR THIS LAWSUIT.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

| IMPORTANT DATES AND CONTACT INFORMATION | | |
|---|--|---|
| Exclusion “Opt Out” Deadline | Month 00, 2014 | |
| Objection Deadline | Month 00, 2014 | |
| Deadline to Request to Speak at the Fairness Hearing | Month 00, 2014 | |
| Fairness Hearing | Month 00, 2014 | |
| Start of Registration Period | The start of the registration process and related deadlines will be announced on www.NFLConcussionSettlement.com following Final Settlement Approval | |
| Registration Deadline | 180 days after registration begins | |
| Submit a Claim | <ul style="list-style-type: none"> Retired NFL Football Players and Representative Claimants for retired players who are diagnosed by the date of Final Settlement Approval must submit claims for monetary awards within two years of the announcement of the registration process. Retired NFL Football Players and Representative Claimants for retired players who are diagnosed after the date of Final Settlement Approval have two years from the date of diagnosis to file claims. | |
| Settlement Administrator | NFL Concussion Settlement P.O. Box 0000 City, ST 00000 Tel: 1-800-000-0000 | |
| Court | Clerk of the District Court/NFL Concussion Settlement United States District Court for the Eastern District of Pennsylvania James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1797 | |
| Class Counsel | Christopher A. Seeger Co-Lead Class Counsel SEEGER WEISS LLP 77 Water Street New York, NY 10005 | Sol Weiss Co-Lead Class Counsel ANAPOL SCHWARTZ 1710 Spruce Street Philadelphia, PA 19103 |
| | Steven C. Marks Class Counsel PODHURST ORSECK P.A. City National Bank Building 25 W. Flagler Street, Suite 800 Miami, FL 33130-1780 | Gene Locks Class Counsel LOCKS LAW FIRM The Curtis Center, Suite 720 East 601 Walnut Street Philadelphia, PA 19106 |
| | Arnold Levin Counsel - Subclass 1 LEVIN FISHBEIN SEDRAN & BERMAN 510 Walnut Street, Suite 500 Philadelphia, PA 19106 | Dianne M. Nast, Counsel – Counsel - Subclass 2 NAST LAW LLC 1101 Market Street, Suite 2801 Philadelphia, Pennsylvania 19107 |

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

Reminder: Provide your name and contact information now at www.NFLConcussionSettlement.com or by calling 1-800-000-0000. This ensures that you will receive additional notice about the registration process and deadlines when it becomes available.

QUESTIONS? CALL 1-800-000-0000 OR VISIT WWW.NFLCONCUSSIONSETTLEMENT.COM

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE : No. 2:12-md-02323-AB
PLAYERS' CONCUSSION :
INJURY LITIGATION : MDL No. 2323

Kevin Turner and Shawn Wooden, :
on behalf of themselves and :
others similarly situated, :
Plaintiffs, : CIVIL ACTION NO: 14-cv-
0029

v. :
National Football League and :
NFL Properties, LLC, :
successor-in-interest to :
NFL Properties, Inc., :
Defendants. :

THIS DOCUMENT RELATES TO: :
ALL ACTIONS :

CLASS ACTION SETTLEMENT AGREEMENT ~~AS OF JUNE~~

(AS AMENDED)

Dated: **June** 25, 2014

Amended: **February 13, 2015**

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**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS’
CONCUSSION INJURY LITIGATION, MDL 2323,
CLASS ACTION SETTLEMENT AGREEMENT AS OF JUNE 25, 2014
(as amended as of February 13, 2015)
(subject to Court approval)**

PREAMBLE

This SETTLEMENT AGREEMENT, dated as of June 25, 2014 (the “Settlement Date”), **as amended as of February 13, 2015**, is made and entered into by and among defendants the National Football League (“NFL”) and NFL Properties LLC (“NFL Properties”) (collectively, “NFL Parties”), by and through their attorneys, and the Class Representatives and Subclass Representatives, individually and on behalf of the Settlement Class and Subclasses, by and through Class Counsel. This Settlement Agreement is intended by the Parties fully, finally, and forever to resolve, discharge, and settle all Released Claims against the Released Parties, as set forth below, subject to review and approval by the Court.¹

RECITALS

A. On January 31, 2012, a federal multidistrict litigation was established in the United States District Court for the Eastern District of Pennsylvania, In re: National Football League Players' Concussion Injury Litigation, MDL No. 2323. Plaintiffs in MDL No. 2323 filed a Master Administrative Long-Form Complaint and a Master Administrative Class Action Complaint for Medical Monitoring on June 7, 2012. Plaintiffs filed an Amended Master Administrative Long-Form Complaint on July 17, 2012. Additional similar lawsuits are pending in various state and federal courts.

B. The lawsuits arise from the alleged effects of mild traumatic brain injury allegedly caused by the concussive and sub-concussive impacts experienced by former NFL Football players. Plaintiffs seek to hold the NFL Parties responsible for their alleged injuries under various theories of liability, including that the NFL Parties allegedly breached a duty to NFL Football players to warn and protect them from the long-term health problems associated with concussions and that the NFL Parties allegedly concealed and misrepresented the connection between concussions and long-term chronic brain injury.

C. On August 30, 2012, the NFL Parties filed motions to dismiss the Master Administrative Class Action Complaint for Medical Monitoring and the Amended Master Administrative Long-Form Complaint on preemption grounds. Plaintiffs filed their oppositions to the motions on October 31, 2012, the NFL Parties filed reply memoranda of law on December 17, 2012, and plaintiffs filed sur-reply

¹ Capitalized terms have the meanings provided in ARTICLE II, unless a section or subsection of this Settlement Agreement provides otherwise.

memoranda of law on January 28, 2013. Oral argument on the NFL Parties' motions to dismiss on preemption grounds was held on April 9, 2013.

D. On July 8, 2013, prior to ruling on the motions to dismiss, the Court ordered the plaintiffs and NFL Parties to engage in mediation to determine if consensual resolution was possible and appointed retired United States District Court Judge Layn Phillips of Irell & Manella LLP as mediator.

E. Over the course of the following two months, the Parties, by and through their respective counsel, engaged in settlement negotiations under the direction of Judge Phillips. On August 29, 2013, the Parties signed a settlement term sheet setting forth the material terms of a settlement agreement. On the same day, the Court issued an order deferring a ruling on the NFL Parties' motions to dismiss and ordering the Parties to submit, as soon as possible, the full documentation relating to the settlement, along with a motion seeking preliminary approval of the settlement and notice plan. On December 16, 2013, the Court appointed a special master, Perry Golkin ("Special Master Golkin"), to assist the Court in evaluating the financial aspects of the proposed settlement.

F. On January 6, 2014, Class Counsel moved the Court for an order, among other things, granting preliminary approval of the proposed settlement and conditionally certifying a settlement class and subclasses. On January 14, 2014, the Court denied that motion without prejudice.

G. In conjunction with the January 2014 filing of the proposed settlement agreement, and this Settlement Agreement, the Class and Subclass Representatives filed Plaintiffs' Class Action Complaint ("Class Action Complaint") on January 6, 2014. In the Class Action Complaint, the Class and Subclass Representatives allege claims for equitable, injunctive and declaratory relief pursuant to Federal Rules of Civil Procedure 23(a)(1-4) & (b)(2), or, alternatively, for compensatory damages pursuant to Federal Rule of Civil Procedure 23(b)(3), for negligence, negligent hiring, negligent retention, negligent misrepresentation, fraud, fraudulent concealment, medical monitoring, wrongful death and survival, and loss of consortium, all under state law.

H. The NFL Parties deny the Class and Subclass Representatives' allegations, and the allegations in Related Lawsuits, and deny any liability to the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member for any claims, causes of action, costs, expenses, attorneys' fees, or damages of any kind, and would assert a number of substantial legal and factual defenses against plaintiffs' claims if they were litigated to conclusion.

I. The Class and Subclass Representatives, through their counsel, have engaged in substantial fact gathering to evaluate the merits of their claims and the NFL Parties' defenses. In addition, the Class and Subclass Representatives have analyzed the legal issues raised by their claims and the NFL Parties' defenses, including, without limitation, the NFL Parties' motions to dismiss the Amended Master

Administrative Long-Form Complaint and Master Administrative Class Action Complaint on preemption grounds.

J. After careful consideration, the Class and Subclass Representatives, and their respective Counsel, have concluded that it is in the best interests of the Class and Subclass Representatives and the Settlement Class and Subclasses to compromise and settle all Released Claims against the Released Parties for consideration reflected in the terms and benefits of this Settlement Agreement. After arm's length negotiations with Counsel for the NFL Parties, including through the efforts of the court-appointed mediator and Special Master Golkin, the Class and Subclass Representatives have considered, among other things: (1) the complexity, expense, and likely duration of the litigation; (2) the stage of the litigation and amount of fact gathering completed; (3) the potential for the NFL Parties to prevail on threshold issues and on the merits; and (4) the range of possible recovery, and have determined that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class and Subclass Representatives and the Settlement Class and Subclasses.

K. The NFL Parties have concluded, in light of the costs, risks, and burden of litigation, that this Settlement Agreement in this complex putative class action litigation is appropriate. The NFL Parties and Counsel for the NFL Parties agree with the Class and Subclass Representatives and their respective counsel that this Settlement Agreement is a fair, reasonable, and adequate resolution of the Released Claims. The NFL Parties reached this conclusion after considering the factual and legal issues relating to the litigation, the substantial benefits of this Settlement Agreement, the expense that would be necessary to defend claims by Settlement Class Members through trial and any appeals that might be taken, the benefits of disposing of protracted and complex litigation, and the desire of the NFL Parties to conduct their business unhampered by the costs, distraction and risks of continued litigation over Released Claims.

L. The Parties desire to settle, compromise, and resolve fully all Released Claims.

M. The Parties desire and intend to seek Court review and approval of the Settlement Agreement, and, upon preliminary approval by the Court, the Parties intend to seek a Final Order and Judgment from the Court dismissing with prejudice the Class Action Complaint and ordering the dismissal with prejudice of Related Lawsuits.

N. This Settlement Agreement will not be construed as evidence of, or as an admission by, the NFL Parties of any liability or wrongdoing whatsoever or as an admission by the Class or Subclass Representatives, or Settlement Class Members, of any lack of merit in their claims.

NOW, THEREFORE, it is agreed that the foregoing recitals are hereby expressly incorporated into this Settlement Agreement and made a part hereof and

further, that in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, including the Releases and Covenant Not to Sue in ARTICLE XVIII, the entry by the Court of the Final Order and Judgment dismissing the Class Action Complaint with prejudice and approving the terms and conditions of the Settlement Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, this action shall be settled and compromised under the following terms and conditions:

ARTICLE I

Definitions of Settlement Class and Subclasses

Section 1.1 Definition of Settlement Class

(a) “Settlement Class” means all Retired NFL Football Players, Representative Claimants and Derivative Claimants.

(b) Excluded from the Settlement Class are any Retired NFL Football Players, Representative Claimants or Derivative Claimants who timely and properly exercise the right to be excluded from the Settlement Class (“Opt Outs”).

Section 1.2 Definition of Subclasses

(a) “Subclass 1” means Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants.

(b) “Subclass 2” means Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a post-mortem diagnosis of CTE.

ARTICLE II

Definitions

Section 2.1 Definitions

For the purposes of this Settlement Agreement, the following terms (designated by initial capitalization throughout this Agreement) will have the meanings set forth in this Section.

Unless the context requires otherwise, (i) words expressed in the masculine will include the feminine and neuter gender and vice versa; (ii) the word “will” shall be construed to have the same meaning and effect as the word “shall”; (iii) the word “or” will not be exclusive; (iv) the word “extent” in the phrase “to the

extent” will mean the degree to which a subject or other thing extends, and such phrase will not simply mean “if”; (v) references to “day” or “days” in the lower case are to calendar days, but if the last day is a Saturday, Sunday, or legal holiday (as defined in Fed. R. Civ. P. 6(a)(6)), the period will continue to run until the end of the next day that is not a Saturday, Sunday, or legal holiday; (vi) references to this Settlement Agreement will include all exhibits, schedules, and annexes hereto; (vii) references to any law will include all rules and regulations promulgated thereunder; (viii) the terms “include,” “includes,” and “including” will be deemed to be followed by “without limitation,” whether or not they are in fact followed by such words or words of similar import; and (ix) references to dollars or “\$” are to United States dollars.

(a) “Active List” means the list of all players physically present, eligible and under contract to play for a Member Club on a particular game day within any applicable roster or squad limits set forth in the applicable NFL or American Football League Constitution and Bylaws.

(b) “Affiliate” means, with respect to any person or entity, any other person or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person or entity, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies, whether through the ownership of voting shares, by contract, or otherwise.

(c) “ALS” means amyotrophic lateral sclerosis, also known as Lou Gehrig’s Disease, as defined in Exhibit 1.

(d) “Alzheimer’s Disease” is defined in Exhibit 1.

(e) “American Football League” means the former professional football league that merged with the NFL.

(f) “Appeals Form” means that document that Settlement Class Members, the NFL Parties or Co-Lead Class Counsel, as the case may be, will submit when appealing Monetary Award or Derivative Claimant Award determinations by the Claims Administrator, as set forth in Section 9.7.

(g) “Appeals Advisory Panel” means a panel of physicians, composed of, in any combination, five (5) board-certified neurologists, board-certified neurosurgeons, and/or other board-certified neuro-specialist physicians agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, any one of whom is eligible to advise the Court or the Special Master with respect to medical aspects of the Class Action Settlement and to perform the other duties of the Appeals Advisory Panel set forth in this Settlement Agreement.

(h) “Appeals Advisory Panel Consultants” means three (3) neuropsychologists certified by the American Board of Professional Psychology (ABPP) or the American Board of Clinical Neuropsychology (ABCN), a member board

of the American Board of Professional Psychology, in the specialty of Clinical Neuropsychology, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, any one of whom is eligible to advise a member of the Appeals Advisory Panel, the Court, or the Special Master on the neuropsychological testing referenced in Exhibits 1 and 2 to the Settlement Agreement, as pertaining to the Qualifying Diagnoses of Level 1.5 Neurocognitive Impairment and Level 2 Neurocognitive Impairment, and Level 1 Neurocognitive Impairment if subject to review as set forth in Section 5.13. Appeals Advisory Panel Consultants do not meet the definition of Appeals Advisory Panel members and shall not serve as members of the Appeals Advisory Panel.

(i) “Baseline Assessment Program” (“BAP”) means the program described in ARTICLE V.

(j) “Baseline Assessment Program Supplemental Benefits” or “BAP Supplemental Benefits” means medical treatment, including, as needed, counseling and pharmaceutical coverage, for Level 1 Neurocognitive Impairment (as set forth in Exhibit 1) within a network of Qualified BAP Providers and Qualified BAP Pharmacy Vendor(s), respectively, established by the BAP Administrator, as set forth in Section 5.11.

(k) “Baseline Assessment Program Fund Administrator” or “BAP Administrator” means that person(s) or entity, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, to perform the responsibilities assigned to the BAP Administrator under this Settlement Agreement, including, without limitation, as set forth in ARTICLE V.

(l) “Baseline Assessment Program Fund” or “BAP Fund” means the fund to pay BAP costs and expenses, as set forth in ARTICLE V.

(m) “Claim Form” means that document to be submitted to the Claims Administrator by a Settlement Class Member who is a Retired NFL Football Player or Representative Claimant claiming a Monetary Award, as set forth in ARTICLE VIII.

(n) “Claim Package” means the Claim Form and other documentation, as set forth in Section 8.2(a).

(o) “Claims Administrator” means that person(s) or entity, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, to perform the responsibilities assigned to the Claims Administrator under this Settlement Agreement, including, without limitation, as set forth in Section 10.2.

(p) “Class Action Complaint” means the complaint captioned Plaintiffs’ Class Action Complaint filed on consent in the Court on January 6, 2014.

(q) “Class Action Settlement” means that settlement set forth in this Settlement Agreement.

(r) “Class Counsel” means, pending Court appointment, the counsel who are so designated and who are signatories to this Settlement Agreement, namely, Co-Lead Class Counsel, Christopher A. Seeger and Sol Weiss, Subclass Counsel, Arnold Levin and Dianne M. Nast, and Steven C. Marks of Podhurst Orseck, P.A. and Gene Locks of Locks Law Firm, and, upon appointment, such other counsel as the Court may appoint to represent the Settlement Class.

(s) “Class Representatives” means Shawn Wooden and Kevin Turner, or such other or different persons as may be appointed by the Court as the representatives of the Settlement Class.

(t) “CMS” means the Centers for Medicare & Medicaid Services, the agency within the United States Department of Health and Human Services responsible for administration of the Medicare Program and the Medicaid Program.

(u) “Co-Lead Class Counsel” means, pending Court appointment, the counsel who are so designated and who are signatories to this Settlement Agreement, namely, Christopher A. Seeger of Seeger Weiss LLP and Sol Weiss of Anapol Schwartz, and, upon appointment, such other counsel as the Court may appoint to represent the Settlement Class in a lead role.

(v) “Collective Bargaining Agreement” means the August 4, 2011 Collective Bargaining Agreement between the NFL Management Council and the NFL Players Association, individually and together with all previous and future NFL Football collective bargaining agreements governing NFL Football players.

(w) “Counsel for the NFL Parties” means Paul, Weiss, Rifkind, Wharton & Garrison LLP, or any law firm or attorney so designated in writing by the NFL Parties.

(x) “Court” means the United States District Court for the Eastern District of Pennsylvania, Judge Anita Brody (or any successor judge designated by the United States District Court for the Eastern District of Pennsylvania, or a magistrate judge designated by Judge Brody or such designated successor judge, as set forth in and pursuant to Federal Rule of Civil Procedure 72), presiding in In re: National Football League Players’ Concussion Injury Litigation, MDL No. 2323. For the period of time from the Effective Date up to and including the fifth year of the Class Action Settlement, the Parties agree, in accordance with the provisions of 28 U.S.C. § 636(c), to waive their right to proceed before a judge of the United States District Court in connection with issues relating to the administration of this Settlement Agreement where the Court is required or requested to act, and consent to have a United States Magistrate Judge conduct such proceedings.

(y) “Covenant Not to Sue” means the covenant not to sue set forth in Section 18.4.

(z) “CTE” means Chronic Traumatic Encephalopathy.

(aa) “Death with CTE” is defined in Exhibit 1.

(bb) “Deficiency” means any failure of a Settlement Class Member to provide required information or documentation to the Claims Administrator, as set forth in Section 8.5.

(cc) “Derivative Claim Form” means that document to be submitted to the Claims Administrator by a Settlement Class Member who is a Derivative Claimant claiming a Derivative Claimant Award, as set forth in ARTICLE VIII.

(dd) “Derivative Claim Package” means the Derivative Claim Form and other documentation, as set forth in Section 8.2(b).

(ee) “Derivative Claimants” means spouses, parents, children who are dependents, or any other persons who properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player.

(ff) “Derivative Claimant Award” means the payment of money from the Monetary Award of the subject Retired NFL Football Player to a Settlement Class Member who is a Derivative Claimant, as set forth in ARTICLE VII.

(gg) “Diagnosing Physician Certification” means that document which a Settlement Class Member who is a Retired NFL Football Player or Representative Claimant must submit either as part of a Claim Package in order to receive a Monetary Award, as set forth in Section 8.2(a), or to receive BAP Supplemental Benefits, as set forth in Section 5.11, the contents of which shall be agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties and that shall include, without limitation: (i) a certification under penalty of perjury by the diagnosing physician that the information provided is true and correct, (ii) the Qualifying Diagnosis being made consistent with the criteria in Exhibit 1 (Injury Definitions) and the date of diagnosis, and (iii) the qualifications of the diagnosing physician, including, without limitation, whether the diagnosing physician is a Qualified MAF Physician.

(hh) “Education Fund” means a fund to support education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of Retired NFL Football Players regarding the NFL CBA Medical and Disability Benefits programs, and other educational initiatives benefitting Retired NFL Football Players, as set forth in ARTICLE XII.

(ii) “Education Fund Amount” means the amount of Ten Million United States dollars (U.S. \$10,000,000), as set forth in Section 23.1(c).

(jj) “Effective Date” means (i) the day following the expiration of the deadline for appealing the entry by the Court of the Final Order and Judgment approving the Settlement Agreement and certifying the Settlement Class (or for appealing any ruling on a timely motion for reconsideration of such Final Order, whichever is later), if no such appeal is filed; or (ii) if an appeal of the Final Order and Judgment is filed, the date upon which all appellate courts with jurisdiction (including the United States Supreme Court by petition for certiorari) affirm such Final Order and Judgment, or deny any such appeal or petition for certiorari, such that no future appeal is possible.

(kk) “Eligible Season” means a season in which a Retired NFL Football Player or deceased Retired NFL Football Player was: (i) on a Member Club’s Active List on the date of three (3) or more regular season or postseason games; or (ii) on a Member Club’s Active List on the date of one (1) or more regular or postseason games, and then spent at least two (2) regular or postseason games on a Member Club’s injured reserve list or inactive list due to a concussion or head injury. A “half of an Eligible Season” means a season in which a Retired NFL Football Player or deceased Retired NFL Football Player was: (i) on a Member Club’s practice, developmental, or taxi squad roster for at least eight (8) regular or postseason games; or (ii) on a World League of American Football, NFL Europe League, or NFL Europa League team’s active roster on the date of three (3) or more regular season or postseason games or on the active roster on the date of one (1) or more regular or postseason games, and then spent at least two (2) regular or postseason games on the World League of American Football, NFL Europe League, or NFL Europa League injured reserve list or team inactive list due to a concussion or head injury.

(ll) “Fairness Hearing” means the hearing scheduled by the Court to consider the fairness, reasonableness, and adequacy of this Settlement Agreement under Rule 23(e)(2) of the Federal Rules of Civil Procedure, and to determine whether a Final Order and Judgment should be entered.

(mm) “Final Approval Date” means the date on which the Court enters the Final Order and Judgment.

(nn) “Final Order and Judgment” means the final judgment and order entered by the Court, substantially in the form of Exhibit 4, and as set forth in ARTICLE XX.

(oo) “Funds” means the Settlement Trust Account, the BAP Fund, the Monetary Award Fund, and the Education Fund.

(pp) “Governmental Payor” means any federal, state, or other governmental body, agency, department, plan, program, or entity that administers,

funds, pays, contracts for, or provides medical items, services, and/or prescription drugs, including, but not limited to, the Medicare Program, the Medicaid Program, Tricare, the Department of Veterans Affairs, and the Department of Indian Health Services.

(qq) “HIPAA” means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (1996) (codified as amended in scattered sections of 42 U.S.C.) and the implementing regulations issued by the United States Department of Health and Human Services thereunder, and incorporates by reference the provisions of the Health Information Technology for Economic and Clinical Health Act (Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009)) pertaining to Protected Health Information.

(rr) “Level 1 Neurocognitive Impairment” is defined in Exhibit 1.

(ss) “Level 1.5 Neurocognitive Impairment” is defined in Exhibit 1.

(tt) “Level 2 Neurocognitive Impairment” is defined in Exhibit 1.

(uu) “Lien” means any statutory lien of a Government Payor or Medicare Part C or Part D Program sponsor; or any mortgage, lien, pledge, charge, security interest, or legal encumbrance, of any nature whatsoever, held by any person or entity, where there is a legal obligation to withhold payment of a Monetary Award, Supplemental Monetary Award, Derivative Claimant Award, or some portion thereof, to a Settlement Class Member under applicable federal or state law.

(vv) “Lien Resolution Administrator” means that person(s) or entity, agreed to and jointly recommended by Co-Lead Class Counsel and Counsel for the NFL Parties, and appointed by the Court, to perform the responsibilities assigned to the Lien Resolution Administrator under this Settlement Agreement, including, without limitation, as set forth in ARTICLE XI.

(ww) “Medicaid Program” means the federal program administered by the states under which certain medical items, services, and/or prescription drugs are furnished to Medicaid beneficiaries under Title XIX of the Social Security Act, 42 U.S.C. § 1396–1, *et seq.*

(xx) “Medicare Part C or Part D Program” means the program(s) under which Medicare Advantage, Medicare cost, and Medicare health care prepayment plan benefits and Medicare Part D prescription drug plan benefits are administered by private entities that contract with CMS.

(yy) “Medicare Program” means the Medicare Parts A and B federal program administered by CMS under which certain medical items, services,

and/or prescription drugs are furnished to Medicare beneficiaries under Title XVIII of the Social Security Act, 42 U.S.C. § 1395, *et seq.*

(zz) “Member Club” means any past or present member club of the NFL or any past member club of the American Football League.

(aaa) “Monetary Award” means the payment of money from the Monetary Award Fund to a Settlement Class Member, other than a Derivative Claimant, as set forth in ARTICLE VI. The term “Monetary Award” shall also include “Supplemental Monetary Award” with respect to the claims process set forth in this Settlement Agreement, including, without limitation, relating to submission and approval of claims, calculation and distribution of awards, and appeals.

(bbb) “Monetary Award Fund” or “MAF” means the sixty-five (65) year fund, as set forth in Section 6.10.

(ccc) “Monetary Award Grid” means that document attached as Exhibit 3.

(ddd) “MSP Laws” means the Medicare Secondary Payer Act set forth at 42 U.S.C. § 1395y(b), as amended from time to time, and implementing regulations, and other applicable written CMS guidance.

(eee) “NFL CBA Medical and Disability Benefits” means any disability or medical benefits available under the Collective Bargaining Agreement, including the benefits available under the Bert Bell/Pete Rozelle NFL Player Retirement Plan; NFL Player Supplemental Disability Plan, including the Neuro-Cognitive Disability Benefit provided for under Article 65 of the Collective Bargaining Agreement; the 88 Plan; Gene Upshaw NFL Player Health Reimbursement Account Plan; Former Player Life Improvement Plan; NFL Player Insurance Plan; and/or the Long Term Care Insurance Plan.

(fff) “NFL Football” means the sport of professional football as played in the NFL, the American Football League, the World League of American Football, the NFL Europe League, and the NFL Europa League. NFL Football excludes football played by all other past, present or future professional football leagues, including, without limitation, the All-American Football Conference.

(ggg) “NFL Medical Committees” means the various past and present medical committees, subcommittees and panels that operated or operate at the request and/or direction of the NFL, whether independent or not, including, without limitation, the Injury and Safety Panel, Mild Traumatic Brain Injury Committee, Head Neck and Spine Medical Committee, Foot and Ankle Subcommittee, Cardiovascular Health Subcommittee, and Medical Grants Subcommittee, and all persons, whether employees, agents or independent of the NFL, who at any time were members of or participated on each such panel, committee, or subcommittee.

(hhh) “Notice of Challenge Determination” means the written notice set forth in Section 4.3(a)(ii)-(iv).

(iii) “Notice of Deficiency” means that document that the Claims Administrator sends to any Settlement Class Member whose Claim Package or Derivative Claim Package contains a Deficiency, as set forth in Section 8.5.

(jjj) “Notice of Derivative Claimant Award Determination” means the written notice set forth in Section 9.2(a)-(b).

(kkk) “Notice of Monetary Award Claim Determination” means the written notice set forth in Section 9.1(b)-(c).

(lll) “Notice of Registration Determination” means the written notice set forth in Section 4.3.

(mmm) “Offsets” means downward adjustments to Monetary Awards, as set forth in Section 6.7(b).

(nnn) “Opt Out,” when used as a verb, means the process by which any Retired NFL Football Player, Representative Claimant or Derivative Claimant otherwise included in the Settlement Class exercises the right to exclude himself or herself from the Settlement Class in accordance with Fed. R. Civ. P. 23(c)(2).

(ooo) “Opt Outs,” when used as a noun, means those Retired NFL Football Players, Representative Claimants and Derivative Claimants who would otherwise have been included in the Settlement Class and who have timely and properly exercised their rights to Opt Out and therefore, after the Final Approval Date, are not Settlement Class Members.

(ppp) “Other Party” means every person, entity, or party other than the Released Parties.

(qqq) “Parkinson’s Disease” is defined in Exhibit 1.

(rrr) “Parties” means the Class Representatives and Subclass Representatives, individually and on behalf of the Settlement Class and Subclasses, and the NFL Parties.

(sss) “Personal Signature” means the actual signature by the person whose signature is required on the document. Unless otherwise specified in this Settlement Agreement, a document requiring a Personal Signature may be submitted by an actual original “wet ink” signature on hard copy, or a PDF or other electronic image of an actual signature, but cannot be submitted by an electronic signature within the meaning of the Electronic Records and Signatures in Commerce Act, 15 U.S.C. §§7001, *et seq.*, the Uniform Electronic Transactions Act, or their successor acts.

(ttt) “Preliminary Approval and Class Certification Order” means the order, upon entry by the Court, preliminarily approving the Class Action Settlement and conditionally certifying the Settlement Class and Subclasses.

(uuu) “Protected Health Information” means individually identifiable health information, as defined in 45 C.F.R. § 160.103.

(vvv) “Qualified BAP Providers” means neuropsychologists certified by the American Board of Professional Psychology (ABPP) or the American Board of Clinical Neuropsychology (ABCN), a member board of the American Board of Professional Psychology, in the specialty of Clinical Neuropsychology, and board-certified neurologists, eligible to conduct baseline assessments of Retired NFL Football Players under the BAP, as set forth in Section 5.7(a).

(www) “Qualified MAF Physician” means a board-certified neurologist, board-certified neurosurgeon, or other board-certified neuro-specialist physician, who is part of an approved list of physicians authorized to make Qualifying Diagnoses, as set forth in Section 6.5.

(xxx) “Qualified Pharmacy Vendor(s)” means one or more nationwide mail order pharmacies contracted to provide approved pharmaceutical prescriptions as part of the BAP Supplemental Benefits, as set forth in Section 5.7(b).

(yyy) “Qualifying Diagnosis” or “Qualifying Diagnoses” means Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, Alzheimer’s Disease, Parkinson’s Disease, ALS, and/or Death with CTE, as set forth in Exhibit 1 (Injury Definitions).

(zzz) “Related Lawsuits” means all past, present and future actions brought by one or more Releasors against one or more Released Parties pending in the Court, other than the Class Action Complaint, or in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum that arise out of, are based upon or are related to the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, alleged, or referred to in the Class Action Complaint, except that Settlement Class Members’ claims for workers’ compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits are not Related Lawsuits.

(aaaa) “Released Claims” means those claims released as set forth in Section 18.1 and Section 18.2.

(bbbb) “Released Parties” for purposes of the Released Claims means (i) the NFL Parties (including all persons, entities, subsidiaries, divisions, and business units composed thereby), together with (ii) each of the Member Clubs, (iii) each of the NFL Parties’ and Member Clubs’ respective past, present, and future agents, directors, officers, employees, independent contractors, general or limited partners, members, joint venturers, shareholders, attorneys, trustees, insurers (solely in their capacities as liability insurers of those persons or entities referred to in

subparagraphs (i) and (ii) above and/or arising out of their relationship as liability insurers to such persons or entities), predecessors, successors, indemnitees, and assigns, and their past, present, and future spouses, heirs, beneficiaries, estates, executors, administrators, and personal representatives, including, without limitation, all past and present physicians who have been employed or retained by any Member Club and members of all past and present NFL Medical Committees; and (iv) any natural, legal, or juridical person or entity acting on behalf of or having liability in respect of the NFL Parties or the Member Clubs, in their respective capacities as such; and, as to (i)-(ii) above, each of their respective Affiliates, including their Affiliates' officers, directors, shareholders, employees, and agents. For the avoidance of any doubt, Riddell is not a Released Party.

(cccc) "Releases" means the releases set forth in ARTICLE XVIII.

(dddd) "Releasers" means the releasers set forth in Section 18.1.

(eeee) "Representative Claimants" means authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players.

(ffff) "Retired NFL Football Players" means all living NFL Football players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players, or were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and who no longer are under contract to a Member Club and are not seeking active employment as players with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club.

(gggg) "Riddell" means Riddell, Inc.; All American Sports Corporation; Riddell Sports Group, Inc.; Easton-Bell Sports, Inc.; Easton-Bell Sports, LLC; EB Sports Corp.; and RBG Holdings Corp., and each of their respective past, present, and future Affiliates, directors, officers, employees, general or limited partners, members, joint venturers, shareholders, agents, trustees, insurers (solely in their capacities as such), reinsurers (solely in their capacities as such), predecessors, successors, indemnitees, and assigns.

(hhhh) "Settlement Agreement" means this Settlement Agreement and all accompanying exhibits, including any subsequent amendments thereto and any exhibits to such amendments.

(iii) “Settlement Class and Subclasses” is defined in Section 1.1 and Section 1.2.

(jjj) “Settlement Class Member” means each Retired NFL Football Player, Representative Claimant and/or Derivative Claimant in the Settlement Class; provided, however, that the term Settlement Class Member as used herein with respect to any right or obligation after the Final Approval Date does not include any Opt Outs.

(kkk) “Settlement Class Notice” means that notice, in the form of Exhibit 5, and as set forth in Section 14.1, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and approved by the Court.

(lll) “Settlement Class Notice Agent” means that person or entity who will implement the Settlement Class Notice Plan and who will be responsible for the publication and provision of the Settlement Class Notice and Settlement Class Supplemental Notice.

(mmm) “Settlement Class Notice Payment” means Four Million United States dollars (U.S. \$4,000,000), as set forth in Sections 23.1(d) and 23.3(e), for the costs of Settlement Class Notice, any supplemental notice required, including, without limitation, the Settlement Class Supplemental Notice, and compensation of the Settlement Class Notice Agent and the Claims Administrator to the extent the Claims Administrator performs notice-related duties that have been agreed to by the NFL Parties.

(nnn) “Settlement Class Notice Plan” means that document which sets forth the methods, timetable, and responsibilities for providing Settlement Class Notice to Settlement Class Members, as set forth in Section 14.1.

(ooo) “Settlement Class Supplemental Notice” means that notice, as set forth in Section 14.1(d), as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and approved by the Court.

(ppp) “Settlement Date” means the date by which Class Counsel and Counsel for the NFL Parties have all signed ~~this~~the Settlement Agreement dated June 25, 2014 on behalf of the Class and Subclass Representatives, Settlement Class and Subclasses, and the NFL Parties, respectively.

(qqq) “Settlement Trust” means the trust enacted pursuant to the Settlement Trust Agreement, as set forth in Section 23.5.

(rrr) “Settlement Trust Account” means that account created under the Settlement Trust Agreement and held by the Trustee into which the NFL Parties will make payments pursuant to ARTICLE XXIII of this Settlement Agreement.

(ssss) “Settlement Trust Agreement” means the agreement that will establish the Settlement Trust and will be entered into by Co-Lead Class Counsel, the NFL Parties, and the Trustee, as set forth in Section 23.5(c).

(tttt) “Signature” means the actual signature by the person whose signature is required on the document, or on behalf of such person by a person authorized by a power of attorney or equivalent document to sign such documents on behalf of such person. Unless otherwise specified in this Settlement Agreement, a document requiring a Signature may be submitted by: (i) an actual original “wet ink” signature on hard copy; (ii) a PDF or other electronic image of an actual signature; or (iii) an electronic signature within the meaning of the Electronic Records and Signatures in Commerce Act, 15 U.S.C. §§7001, *et seq.*, the Uniform Electronic Transactions Act, or their successor acts.

(uuuu) “Special Master” means that person appointed by the Court pursuant to Federal Rule of Civil Procedure 53 to oversee the administration of the Settlement Agreement, as set forth in Section 10.1.

(vvvv) “Stadium Program Bonds” means the NFL’s G3 and G4 bonds.

(wwwv) “Stroke” means stroke, as defined by the World Health Organization’s International Classification of Diseases, 9th Edition (ICD-9) or the World Health Organization’s International Classification of Diseases, 10th Edition (ICD-10), which occurs prior to or after the time the Retired NFL Football Player played NFL Football. A medically diagnosed Stroke does not include a transient cerebral ischaemic attack and related syndromes, as defined by ICD-10.

(xxxx) “Subclass Counsel” means, pending Court appointment, the counsel who are so designated and who are signatories to this Settlement Agreement, namely Arnold Levin of Levin, Fishbein, Sedran & Berman for Subclass 1, and Dianne M. Nast of NastLaw LLC for Subclass 2, and, upon appointment, such other counsel as the Court may appoint to represent the Settlement Subclasses 1 and 2.

(yyyy) “Subclass Representatives” means Shawn Wooden and Kevin Turner, or such other or different persons as may be designated by the Court as the representatives of the Settlement Subclasses 1 and 2.

(zzzz) “Supplemental Monetary Award” means the supplemental payment of monies from the Monetary Award Fund to a Settlement Class Member, as set forth in Section 6.8.

(aaaaa) “Traumatic Brain Injury” means severe traumatic brain injury unrelated to NFL Football play, that occurs during or after the time the Retired NFL Football Player played NFL Football, consistent with the definitions in the World Health Organization’s International Classification of Diseases, 9th Edition (ICD-9), Codes 854.04, 854.05, 854.14 and 854.15, and the World Health Organization’s

International Classification of Diseases, 10th Edition (ICD-10), Codes S06.9x5 and S06.9x6.

(bbbbb) “Tricare” means the federal program managed and administered by the United States Department of Defense through the Tricare Management Activity under which certain medical items, services, and/or prescription drugs are furnished to eligible members of the military services, military retirees, and military dependents under 10 U.S.C. § 1071, *et seq.*

(ccccc) “Trustee” means that person or entity approved by the Court as trustee of the Settlement Trust Account and as administrator of the qualified settlement fund for purposes of Treasury Regulation §1.468B-2(k)(3), as set forth in ARTICLE XXIII.

ARTICLE III

Settlement Benefits for Class Members

Section 3.1 The Class and Subclass Representatives, by and through Class Counsel and Subclass Counsel, and the NFL Parties, by and through Counsel for the NFL Parties, agree that, in consideration of the Releases and Covenant Not to Sue set forth in ARTICLE XVIII, and the dismissal with prejudice of the Class Action Complaint and the Related Lawsuits, and subject to the terms and conditions of this Settlement Agreement, the NFL Parties will, in addition to other obligations set forth in this Settlement Agreement:

(a) Pay all final Monetary Awards and Derivative Claimant Awards to those Settlement Class Members who qualify for such awards pursuant to the requirements and criteria set forth in this Settlement Agreement;

(b) Provide qualified Settlement Class Members who are Retired NFL Football Players with the option to participate in the BAP and receive a BAP baseline assessment examination and BAP Supplemental Benefits, if eligible, pursuant to the requirements and criteria set forth in this Settlement Agreement; and

(c) Establish the Education Fund to support education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of Retired NFL Football Players regarding the NFL CBA Medical and Disability Benefits programs, and other educational initiatives benefitting Retired NFL Football Players, as set forth in ARTICLE XII.

ARTICLE IV

Information and Registration Process

Section 4.1 Information

(a) Within ten (10) days after the Preliminary Approval and Class Certification Order, Co-Lead Class Counsel will cause to be established and

maintained a public website containing information about the Class Action Settlement (the “Settlement Website”), including the Settlement Class Notice and “Frequently Asked Questions.” Within ninety (90) days after the Effective Date, Co-Lead Class Counsel will cause the Settlement Website to be transitioned for claims administration purposes. The Settlement Website will be the launching site for secure web-based portals established and maintained by the Claims Administrator, BAP Administrator, and/or Lien Resolution Administrator for use by Settlement Class Members and their designated attorneys throughout the term of the Class Action Settlement. The Claims Administrator will post all necessary information about the Class Action Settlement on the Settlement Website, including, as they become available, information about registration deadlines and methods to participate in the BAP, the Claim Package requirements and Monetary Awards, and the Derivative Claim Package requirements and Derivative Claimant Awards. All content posted on the Settlement Website will be subject to advance approval by Co-Lead Class Counsel and Counsel for the NFL Parties.

(b) Within ten (10) days after the Preliminary Approval and Class Certification Order, Co-Lead Class Counsel also will cause to be established and maintained an automated telephone system that uses a toll-free number or numbers to provide information about the Class Action Settlement. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel will cause the automated telephone system to be transitioned for claims administration purposes. Through this system, Settlement Class Members may request and obtain copies of the Settlement Class Notice, Settlement Agreement, Claim Form, Derivative Claim Form, and Appeals Form, and they may speak with operators for further information.

Section 4.2 Registration Methods and Requirements

(a) The Claims Administrator will establish and administer both online and hard copy registration methods for participation in the Class Action Settlement.

(b) The registration requirements will include information sufficient to determine if a registrant is a Settlement Class Member, including: (i) name; (ii) address; (iii) date of birth; (iv) Social Security Number (if any); (v) email address (if any), and whether email, the web-based portal on the Settlement Website, or U.S. mail is the preferred method of communication; (vi) identification as a Retired NFL Football Player, Representative Claimant or Derivative Claimant; (vii) dates and nature of NFL Football employment (*e.g.*, Active List, practice squad, developmental squad), and corresponding identification of the employer Member Club(s) or assigned team(s) (for Retired NFL Football Players, or, for the subject Retired NFL Football Player or deceased Retired NFL Football Player in the case of Representative Claimants and Derivative Claimants); and (viii) Signature of the registering purported Settlement Class Member.

(i) In addition to the registration requirements in this Section 4.2(b), Representative Claimants also will identify the subject deceased or

legally incapacitated or incompetent Retired NFL Football Player, including name, last known address, date of birth, and Social Security Number (if any), and will provide a copy of the court order, or other document issued by an official of competent jurisdiction, providing the authority to act on behalf of that deceased or legally incapacitated or incompetent Retired NFL Football Player.

(ii) In addition to the registration requirements in this Section 4.2(b), Derivative Claimants also will identify the subject Retired NFL Football Player or deceased Retired NFL Football Player and the relationship by which they assert the right under applicable state law to sue independently or derivatively.

(c) Unless good cause, as set forth in subsection (i), is shown, Settlement Class Members must register on or before 180 days from the date that the Settlement Class Supplemental Notice is posted on the Settlement Website. If a Settlement Class Member does not register by that deadline, that Settlement Class Member will be deemed ineligible for the BAP and BAP Supplemental Benefits, Monetary Awards and Derivative Claimant Awards.

(i) Good cause will include, without limitation, (a) that a Settlement Class Member who is a Representative Claimant had not been ordered by a court or other official of competent jurisdiction to be the authorized representative of the subject deceased or legally incapacitated or incompetent Retired NFL Football Player prior to the registration deadline (and the Representative Claimant seeks to register within 180 days of authorization by the court or other official of competent jurisdiction), or (b) that the subject Retired NFL Football Player timely registered prior to his death or becoming legally incapacitated or incompetent and his Representative Claimant seeks to register for that Retired NFL Football Player; or (c) that the subject Retired NFL Football Player timely registered and the Derivative Claimant seeks to register within thirty (30) days of that Retired NFL Football Player's submission of a Claim Package.

Section 4.3 Registration Review

(a) Upon receipt of a purported Settlement Class Member's registration, the Claims Administrator will review the information to determine whether the purported Settlement Class Member is a Settlement Class Member under the Settlement Agreement, and whether he or she has timely registered. In order to determine qualification for the BAP, as set forth in Section 5.1, the Claims Administrator will also determine if a registering Retired NFL Football Player has identified his participation in NFL Football that earns him at least one half of an Eligible Season. The Claims Administrator will then issue a favorable or adverse Notice of Registration Determination, within forty-five (45) days of receipt of the purported Settlement Class Member's registration, informing the purported Settlement Class Member whether he or she is a Settlement Class Member who has properly registered. To the extent the volume of registrations warrants, this deadline may be

extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties.

(i) Favorable Notices of Registration Determination will include information regarding the sections of the Settlement Website and/or secure web-based portals that provide detailed information regarding the Claim Package and Monetary Awards, the Derivative Claim Package and Derivative Claimant Awards and, for Settlement Class Members who are Retired NFL Football Players, information regarding the BAP. The Notice of Registration Determination will inform the Settlement Class Member of his or her unique identifying number for future use, including on a Claim Form or Derivative Claimant Form.

(ii) Adverse Notices of Registration Determination will include information regarding how the purported Settlement Class Member can challenge the determination. The purported Settlement Class Member may submit a written challenge to the Claims Administrator within sixty (60) days after the date of the Notice of Registration Determination. The purported Settlement Class Member must present a sworn statement or other evidence in support of any written challenge. The Claims Administrator will make a determination on the written challenge and issue a Notice of Challenge Determination to the purported Settlement Class Member and the NFL Parties informing them of the decision.

(iii) The NFL Parties can challenge, for good cause, a favorable Notice of Registration Determination by submitting a written challenge to the Claims Administrator within sixty (60) days after the date of the Notice of Registration Determination. The NFL Parties must present evidence in support of the written challenge. The Claims Administrator will make a determination on the written challenge and issue a Notice of Challenge Determination to the purported Settlement Class Member and the NFL Parties informing them of the decision.

(iv) Any Notice of Challenge Determination may be appealed by the purported Settlement Class Member or the NFL Parties, provided that the NFL Parties' appeal is limited to challenging the purported Retired NFL Football Player's or subject Retired NFL Football Player's status as a Retired NFL Football Player, in writing to the Court within sixty (60) days after the date of the Notice of Challenge Determination. The parties may present evidence in support of, or in opposition to, the appeal. The Court will be provided access to all documents and information available to the Claims Administrator to aid in determining the appeal. The Court may, in its discretion, refer the appeal to the Special Master. The decision of the Court or the Special Master shall be final and binding.

(v) If either Co-Lead Class Counsel or Counsel for the NFL Parties believe that the Claims Administrator has issued a Notice of Registration Determination that reflects an improper interpretation of the Settlement Class definition set forth in Section 1.1, such counsel may petition the Court to resolve the issue. The Court may, in its discretion, refer the matter to the Special Master. If the Court or the Special Master determines that the Claims Administrator misinterpreted the Settlement

Class definition, the decision of the Court or the Special Master will supersede the prior determination by the Claims Administrator.

ARTICLE V

Baseline Assessment Program

Section 5.1 Qualification. All Retired NFL Football Players with at least one half of an Eligible Season, as defined in Section 2.1(kk), who timely registered to participate in the Class Action Settlement, as set forth in ARTICLE IV, will qualify for the BAP and will be entitled to one (1) baseline assessment examination as provided in Section 5.2. For the avoidance of any doubt, an eligible Retired NFL Football Player who submits a claim for a Monetary Award, whether successful or not, may participate in the BAP, except a Retired NFL Football Player who submits a successful claim for a Monetary Award is not eligible to later receive BAP Supplemental Benefits.

Section 5.2 Scope of Program. The BAP will provide the opportunity for each qualified Retired NFL Football Player, as set forth in Section 5.1, to receive a maximum of one (1) baseline assessment examination, which includes: (a) a standardized neuropsychological examination in accordance with the testing protocol set forth in Exhibit 2 performed by a neuropsychologist certified by the American Board of Professional Psychology (ABPP) or the American Board of Clinical Neuropsychology (ABCN), a member board of the American Board of Professional Psychology, in the specialty of Clinical Neuropsychology, who is a Qualified BAP Provider; and (b) a basic neurological examination performed by a board-certified neurologist who is a Qualified BAP Provider. The diagnosis of Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment and Level 2 Neurocognitive Impairment made pursuant to the BAP must be agreed to by both the neuropsychologist and board-certified neurologist serving as Qualified BAP Providers. BAP baseline assessment examinations are intended to establish a physician/patient relationship between the Retired NFL Football Player and his Qualified BAP Providers. Retired NFL Football Players diagnosed during their BAP baseline assessment examinations by Qualified BAP Providers with Level 1 Neurocognitive Impairment will be eligible to receive BAP Supplemental Benefits, as set forth in Section 5.11. For the avoidance of any doubt, a Qualifying Diagnosis of Alzheimer's Disease, Parkinson's Disease, ALS or Death with CTE shall not be made through the BAP baseline assessment examination.

Section 5.3 Deadline for BAP Baseline Assessment Examination. A Retired NFL Football Player electing to receive a BAP baseline assessment examination must take it: (i) within two (2) years of the commencement of the BAP if he is age 43 or older on the Effective Date; or (ii) if he is younger than age 43 on the Effective Date, before his 45th birthday or within ten (10) years of the commencement of the BAP, whichever occurs earlier. For the avoidance of any doubt, there shall be no baseline assessment examinations after the tenth anniversary of the commencement of the BAP.

Section 5.4 Monetary Award Offset. If a Retired NFL Football Player in Subclass 1 chooses not to participate in the BAP and receives a Qualifying Diagnosis on or after the Effective Date, that Retired NFL Football Player will be subject to a Monetary Award Offset (as set forth in Section 6.7(b)(iv)) based on his non-participation in the BAP unless the Qualifying Diagnosis is of ALS or if he receives any Qualifying Diagnosis other than ALS prior to his deadline to receive a BAP baseline assessment examination as set forth in Section 5.3. This Offset does not apply to a Retired NFL Football Player who is in Subclass 2.

Section 5.5 BAP Term. The BAP will commence one hundred and twenty (120) days after the Settlement Class Supplemental Notice is posted on the Settlement Website and will end ten (10) years after it commences, except that the provision of BAP Supplemental Benefits to Retired NFL Football Players diagnosed with Level 1 Neurocognitive Impairment, as set forth in Exhibit 1, may extend beyond the term of the BAP for up to five (5) years as set forth in Section 5.11. Retired NFL Football Players who are qualified, as set forth in Section 5.1, will be entitled to one (1) baseline assessment examination within the applicable time limitations set forth in Section 5.3.

Section 5.6 BAP Administrator

(a) Appointment and Oversight

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Class Counsel will request that the Court appoint The Garretson Resolution Group, Inc. (“Garretson Group”) as BAP Administrator. Within ten (10) days after the Effective Date, Co-Lead Class Counsel will retain the BAP Administrator appointed by the Court.

(ii) Co-Lead Class Counsel’s retention agreement with the BAP Administrator will provide that the BAP Administrator will perform its responsibilities and take all steps necessary to faithfully implement and administer the BAP-related provisions of the Settlement Agreement, and will require that the BAP Administrator maintain at all times appropriate and sufficient bonding insurance in connection with its performance of its responsibilities under the Settlement Agreement.

(iii) The Court may, at its sole discretion, request reports or information from the BAP Administrator. The BAP Administrator will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs.

(iv) The Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) will oversee the BAP Administrator, and may, at his or her sole discretion, request reports or information from the BAP Administrator.

(v) Beyond the reporting requirements set forth in Section 5.6(a)(iii)-(iv), beginning one month after the Effective Date, the BAP

Administrator will issue a regular monthly report to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, and Counsel for the NFL Parties during the first three years of the BAP, and thereafter on a quarterly basis, or as reasonably agreed upon by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties, regarding the status and progress of the BAP. The monthly (or quarterly) report will include, without limitation, information regarding activity in the BAP, including: (a) the number and identity of Retired NFL Football Players with pending BAP appointments; (b) the monthly and total number of Retired NFL Football Players who took part in the BAP, and the identity of each Settlement Class Member who took part in the preceding month; (c) the monthly and total monetary amounts paid to Qualified BAP Providers; (d) the monthly and total number of Retired NFL Football Players eligible for BAP Supplemental Benefits, as set forth in Section 5.11, and the identity of each such Retired NFL Football Player; (e) any Retired NFL Football Player complaints regarding specific Qualified BAP Providers; (f) expenses/administrative costs, including a summary accounting of the administrative expenses incurred by the BAP Administrator in the preceding month; and (g) any other information reasonably requested by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(vi) Beginning on the first January after the Effective Date, the BAP Administrator will provide annual financial reports to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties, based on information from the preceding year, regarding: (a) the number of Retired NFL Football Players who took part in the BAP; (b) the monetary amount paid to Qualified BAP Providers; (c) the number of Retired NFL Football Players eligible for BAP Supplemental Benefits; (d) the expenses/administrative costs incurred by the BAP Administrator; (e) the projected expenses/administrative costs for the remainder of the BAP, including the five-year period for the provision of BAP Supplemental Benefits as set forth in Sections 5.5 and 5.11; (f) the monies remaining in the BAP Fund; and (g) any other information reasonably requested by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(b) Compensation and Expenses. Reasonable compensation of the BAP Administrator, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and reasonable out-of-pocket costs and expenses directly incurred as a result of the BAP Administrator's responsibilities will be paid out of the BAP Fund. The BAP Administrator shall submit an annual budget to the Court for review and approval. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the BAP Administrator's out-of-pocket costs and expenses, in which case the Court will determine (or may, in its discretion, refer the challenge to the Special Master to determine) the reasonableness of such costs and expenses. If the Court or Special Master, as applicable, determines that any costs and expenses are

unreasonable, the BAP Administrator will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the BAP Administrator will refund that amount to the BAP Fund.

(c) Liability. The Parties, Class Counsel, Counsel for the NFL Parties, and the Special Master, and their respective Affiliates, will not be liable for any act, or failure to act, of the BAP Administrator.

(d) Replacement. The BAP Administrator may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If the BAP Administrator resigns, dies, is replaced, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed BAP Administrator for appointment by the Court.

(e) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, the Special Master and the BAP Administrator will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the BAP Administrator, including, without limitation, its executive leadership team and all employees conducting BAP-related work, on the one hand, and Settlement Class Members (and counsel individually representing them, if any), the NFL Parties, Counsel for the NFL Parties, or the Special Master, on the other hand. Co-Lead Class Counsel, Counsel for the NFL Parties, and the BAP Administrator, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) may modify such procedures in the future, if appropriate. Notwithstanding anything herein to the contrary, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master understand that the BAP Administrator regularly provides settlement administration, lien resolution, and other related services to settling parties and their attorneys, and Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master acknowledge and agree that it shall not be a conflict of interest for the BAP Administrator to provide such services to such individuals or to receive compensation for such work.

Section 5.7 Retention and Oversight of Qualified BAP Providers and Qualified BAP Pharmacy Vendor(s)

(a) Qualified BAP Providers

(i) Within ninety (90) days after the Effective Date, the BAP Administrator will establish and maintain a network of Qualified BAP Providers to provide baseline assessment examinations to Retired NFL Football Players, and to provide medical treatment to Retired NFL Football Players who receive BAP Supplemental Benefits, as set forth in Section 5.11. The BAP Administrator's selection of all Qualified BAP Providers will be subject to written approval of Co-Lead Class Counsel and Counsel for the NFL Parties, each of which will have the

unconditional right to veto the selection of twenty (20) Qualified BAP Providers, in addition to the unconditional right to veto the selection of any Qualified BAP Provider who has served or is serving as a litigation expert consultant or expert witness for a party or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint since July 1, 2011. Thereafter, the BAP Administrator may select additional Qualified BAP Providers during the term of the BAP to the extent necessary to effectuate network coverage, subject to written approval of Co-Lead Class Counsel and Counsel for the NFL Parties. Co-Lead Class Counsel and Counsel for the NFL Parties each shall accrue five (5) additional unconditional veto rights for every fifty (50) new Qualified BAP Providers selected and approved during the term of the BAP, and shall retain the unconditional right to veto the selection of any Qualified BAP Provider who has served or is serving as a litigation expert consultant or expert witness for a party or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint since July 1, 2011.

(ii) The BAP Administrator will select Qualified BAP Providers based on the following criteria: (a) education, training, licensing, credentialing, board certification, and insurance coverage; (b) ability to provide the specified baseline assessment examinations under the BAP; (c) ability to provide medical services under the BAP Supplemental Benefits; (d) ability to provide all required examinations and services in a timely manner; (e) geographic proximity to Retired NFL Football Players; and (f) rate structure and payment terms. Under no circumstances will a Qualified BAP Provider be selected or approved who has been convicted of a crime of dishonesty, or who is serving on or after the Final Approval Date as a litigation expert consultant or expert witness for an Opt Out, or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint. If selected and approved, under no circumstances shall a Qualified BAP Provider continue to serve in that role if convicted of a crime of dishonesty and/or thereafter retained as a litigation expert consultant or expert witness for an Opt Out, or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint.

(iii) In order to be eligible for selection, each Qualified BAP Provider must provide the following information to the BAP Administrator: (a) state professional license number; (b) National Provider Identifier; (c) board certification information, if any; (d) evidence of proper licensing and insurance coverage under applicable state laws; (e) experience, including number of years as a healthcare provider; (f) primary and additional service locations; (g) mailing and billing addresses; (h) tax identification information; (i) ability to provide the specified baseline assessment examinations; (j) capacity for new patients; (k) appointment accessibility; (l) languages spoken; (m) criminal record; (n) the percentage of his/her practice related to litigation expert/consulting engagements, including the relative percentage of such expert/consulting performed for plaintiffs, defendants and court/administrative bodies, and a general description of such engagements, since July 1, 2011; (o) list of all litigation-related engagements as a litigation expert consultant or expert witness arising out of, or relating to, head, brain and/or cognitive injury of athletes; (p) a general

description of any past or present salaried, or other professional or consulting relationships with the NFL Parties or Member Clubs; and (q) such other information as the BAP Administrator may reasonably request.

(iv) The BAP Administrator will enter into a written contract with each Qualified BAP Provider (the “Provider Contract”) to provide the specified baseline assessment examinations under the BAP and authorized medical services under the BAP Supplemental Benefits. The Provider Contract will include, among other things, a description of the baseline assessment examinations that will be provided under the BAP; rates, billing, and payment terms; terms relating to licensing, credentials, board certification, and other qualifications; the amount and type of insurance to be maintained by the Qualified BAP Provider; procedures for scheduling, rescheduling, and cancelling BAP appointments; document retention policies and procedures; and fraud policies. The Provider Contract will further provide: (a) that the Qualified BAP Provider will release and hold harmless the Parties, Class Counsel, Counsel for the NFL Parties, Special Master, BAP Administrator, and Claims Administrator from any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, arising from or related to the services provided by that Qualified BAP Provider as part of the BAP; (b) that the Qualified BAP Provider will not seek payment from the Parties, Class Counsel, Counsel for the NFL Parties, Special Master, BAP Administrator, or Claims Administrator for any medical service(s), examination(s), and/or test(s) or any medical treatment or care that are not part of the specified baseline assessment examinations or authorized for payment under the terms of the BAP Supplemental Benefits, except that the Qualified BAP Provider may seek payment from a Retired NFL Football Player or, where applicable, his or her insurer for any medical service(s), examination(s), and/or test(s) or any medical treatment or care that are not part of the specified baseline assessment examinations or BAP Supplemental Benefits, where the Retired NFL Football Player, or, where applicable, his or her insurer, has agreed in writing to authorize and pay for such medical service(s), examination(s), and/or test(s) or any medical treatment or care; and (c) that the Qualified BAP Provider will retain medical records for Retired NFL Football Players in accordance with Section 5.10.

(1) The Provider Contract will be drafted by the BAP Administrator, as overseen by the Special Master, and in consultation with and subject to the approval of, Co-Lead Class Counsel and Counsel for the NFL Parties.

(2) The Provider Contract’s fraud policies will contain the following warning against fraudulent conduct: “As a Qualified BAP Provider you have agreed to provide your services and make your diagnosis in good faith in accordance with best medical practices. Your diagnoses and billings will be audited on a periodic and random basis subject to the discretion of the BAP Administrator and Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof). Any finding of fraudulent diagnoses or billings by you will be subject to, without limitation, referral to appropriate regulatory

and disciplinary boards and agencies and/or federal authorities, the immediate termination of this contract, and your disqualification from serving as a diagnosing physician in any aspect of the Class Action Settlement.”

(v) The BAP Administrator will audit the credentialing and performance of Qualified BAP Providers on an annual (or, as needed, more frequent) basis. The criteria and process for the audit will be overseen by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) and subject to the approval of Co-Lead Class Counsel and Counsel for the NFL Parties, except Co-Lead Class Counsel or Counsel for the NFL Parties shall maintain the right to order audits of specific Qualified BAP Providers under this subparagraph, on the basis of good cause, at any time during the BAP, including the five-year period for the provision of BAP Supplemental Benefits as set forth in Sections 5.5 and 5.11. The BAP Administrator may conduct onsite visits at the locations of Qualified BAP Providers on a random or adverse selection basis to confirm their compliance with the Provider Contract described in Section 5.7(a)(iv).

(vi) All Qualified BAP Providers will bill the BAP Administrator directly for any services rendered pursuant to the terms and conditions of the BAP. The BAP Administrator will establish procedures to ensure that the BAP Fund is the primary payer for BAP baseline assessment examinations and treatments under the BAP Supplemental Benefits, subject to the coverage limits of the BAP Supplemental Benefits, consistent with the Provider Contract, which will be executed by the BAP Administrator and each participating Qualified BAP Provider. The BAP Administrator will establish and administer a system to audit Qualified BAP Providers’ procedures for billing and providing BAP baseline assessment examinations and BAP Supplemental Benefits treatments. This audit system will be designed to detect billing errors that could result in overpayment or the payment of unauthorized medical services. The BAP Administrator will bring abusive and fraudulent Qualified BAP Provider billings to the attention of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties.

(vii) The BAP Administrator may terminate the Provider Contract of any Qualified BAP Providers that are not in compliance with its terms, or for other cause.

(b) Qualified Pharmacy Vendor(s)

(i) Within ninety (90) days after the Effective Date, the BAP Administrator will contract with one or more Qualified BAP Pharmacy Vendor(s) to provide pharmaceuticals covered by the BAP Supplemental Benefits, as set forth in Section 5.11. The BAP Administrator’s selection of the Qualified BAP Pharmacy Vendor(s) will be subject to written approval of the Special Master, in consultation with Co-Lead Class Counsel and Counsel for the NFL Parties.

(ii) The BAP Administrator will select Qualified BAP Pharmacy Vendor(s) based on the following criteria: (a) proper licensing for operation as a mail order pharmacy in all U.S. states and territories; (b) nationwide coverage and ease of administration; and (c) rate structure and payment terms.

(iii) In order to be eligible for selection, each Qualified BAP Pharmacy Vendor must provide the following information to the BAP Administrator: (a) federal DEA and/or state license numbers, as applicable; (b) evidence of proper licensing under applicable state laws; (c) experience, including number of years as a mail order pharmacy; (d) information about processes required to submit and fulfill mail order prescriptions; (e) average processing and delivery time from submission of a valid prescription; (f) policies related to generic substitution of name-brand pharmaceutical products; (g) mailing and billing addresses; (h) tax identification information; (i) languages spoken; and (j) such other information as the BAP Administrator may reasonably request.

(iv) The BAP Administrator will enter into a written contract with each Qualified BAP Pharmacy Vendor (the "Pharmacy Contract") to provide the pharmaceuticals covered under the BAP Supplemental Benefits. The Pharmacy Contract will include, among other things, a description of the pharmaceutical therapies that will be covered under the BAP Supplemental Benefits; rates, billing, and payment terms; terms relating to qualifications; procedures for submitting, filling, and shipping prescriptions; document retention policies and procedures; and fraud policies. The Pharmacy Contract will further provide: (a) that the Qualified BAP Pharmacy Vendor will release and hold harmless the Parties, Class Counsel, Counsel for the NFL Parties, Special Master, BAP Administrator, and Claims Administrator from any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, arising from or related to the services provided by that Qualified BAP Pharmacy Vendor as part of the BAP; and (b) that the Qualified BAP Pharmacy Vendor will not seek payment from the Parties, Class Counsel, Counsel for the NFL Parties, Special Master, BAP Administrator, or Claims Administrator for any prescriptions that are authorized for payment under the terms of the BAP Supplemental Benefits.

(v) The BAP Administrator will audit the performance of Qualified BAP Pharmacy Vendor(s) on an annual (or, as needed, more frequent) basis. The criteria and process for the audit will be overseen by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) and subject to the approval of Co-Lead Class Counsel and Counsel for the NFL.

(vi) All Qualified BAP Pharmacy Vendors will be reimbursed by the BAP Administrator directly for any services rendered pursuant to the terms and conditions of the BAP, subject to the coverage limits of the BAP Supplemental Benefits. The BAP Administrator will establish procedures to ensure that the BAP Fund is the primary payer for covered prescriptions consistent with the

Pharmacy Contract, which will be executed by the BAP Administrator and each participating Qualified BAP Provider. The BAP Administrator will establish and administer a system to audit Qualified BAP Pharmacy Vendor(s)' procedures for billing and providing approved BAP Supplemental Benefits prescriptions. This audit system will be designed to detect billing errors that could result in overpayment or the payment of unauthorized prescriptions. The BAP Administrator will bring abusive and fraudulent Qualified BAP Pharmacy Vendor billings to the attention of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties.

(vii) The BAP Administrator may terminate the Pharmacy Contract of any Qualified BAP Pharmacy Vendor that is not in compliance with its terms, or for other cause.

Section 5.8 Scheduling and Providing Baseline Assessment Examinations. The Parties will establish, subject to Court approval, processes and procedures governing the scheduling and provision of BAP examinations.

Section 5.9 Other Communications with Retired NFL Football Players

(a) The BAP Administrator will send an Explanation of Benefits ("EOB") statement to each Retired NFL Football Player following a BAP appointment. The statement will describe the services and medical examinations that were performed during the appointment.

(b) Beginning one (1) year after the Effective Date of the Settlement Agreement, the BAP Administrator will send Retired NFL Football Players who have not received baseline assessments and remain eligible to do so, an annual statement describing the BAP and requesting that they update any contact information that has changed in the preceding year.

(c) If a Retired NFL Football Player is represented by counsel and has provided such notice to the BAP Administrator, the BAP Administrator will copy his counsel of record on any written communications with the Retired NFL Football Player.

Section 5.10 Use and Retention of Medical Records

(a) All Retired NFL Football Players who participate in the BAP will be encouraged to provide their confidential medical records for use in medical research into cognitive impairment and safety and injury prevention with respect to football players. The provision of such medical records shall be subject to the reasonable informed consent of the Retired NFL Football Players, and in compliance with applicable law, including a HIPAA-compliant authorization form. Medical records and information used in medical research will be kept confidential.

(b) The BAP Administrator will retain the medical records of Retired NFL Football Players and other program-defined forms that must be completed by the Qualified BAP Providers.

(c) Qualified BAP Providers who provide BAP baseline assessment examinations will be required to retain all medical records from such visits in compliance with applicable state and federal laws; provided, however, that each Qualified BAP Provider will be required to retain all medical records in the format(s) prescribed by applicable state and federal laws and, notwithstanding any shorter time period permitted under applicable laws, will be required to retain such medical records for not less than ten (10) years after the conclusion of the BAP term.

(d) All Retired NFL Football Player medical records will be treated as confidential, as set forth in Section 17.2.

Section 5.11 BAP Supplemental Benefits. Each Retired NFL Football Player diagnosed by Qualified BAP Providers with a Level 1 Neurocognitive Impairment, as defined in Exhibit 1, shall be eligible for BAP Supplemental Benefits related to the Retired NFL Football Player's impairment in the form of medical treatment, counseling and/or examination by Qualified BAP Providers, including, if medically needed and prescribed by a Qualified BAP Provider, pharmaceuticals by Qualified BAP Pharmacy Vendor(s). BAP Supplemental Benefits shall comprise medical treatments and/or examinations generally accepted by the medical community. The BAP Supplemental Benefits must be used within the term of the BAP or within five (5) years of diagnosis of Level 1 Neurocognitive Impairment by Qualified BAP Providers, even if the five (5) year period extends beyond the term of the BAP, whichever is later. The BAP Administrator, as overseen by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), and in consultation with, and subject to the approval of, Co-Lead Class Counsel and Counsel for the NFL Parties, will establish the procedures governing BAP Supplemental Benefits.

Section 5.12 Diagnosing Physician Certifications. Qualified BAP Providers who diagnose a Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment, as set forth in Exhibit 1, must support that diagnosis with a Diagnosing Physician Certification and supporting medical records. The Qualified BAP Provider must provide the Diagnosing Physician Certification and copies of the supporting medical records to the Retired NFL Football Player, his counsel (if any), and the BAP Administrator.

Section 5.13 Conflicting Opinions of Qualified BAP Providers. If there is a lack of agreement, as required by Section 5.2 and Exhibit 1, between the two Qualified BAP Providers regarding whether a Retired NFL Football Player has Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, or none, the BAP Administrator may in its discretion: (a) request that the Qualified BAP Providers confer with each other in an attempt to resolve the conflict; (b) request that a second BAP baseline assessment examination be

conducted by different Qualified BAP Providers; or (c) refer the results of the BAP baseline assessment examination and all relevant medical records to a member of the Appeals Advisory Panel for review and decision. The decision of the member of the Appeals Advisory Panel will determine whether the Retired NFL Football Player has Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, or none. If the member of the Appeals Advisory Panel determines that additional review, analysis and/or testing needs to be conducted prior to a decision, such review, analysis and/or testing will be completed by Qualified BAP Providers as selected by the BAP Administrator. The decision of the Appeals Advisory Panel member as to whether the Retired NFL Football Player has Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, or none, will be final and binding, except a claim for a Monetary Award or Derivative Claimant Award relying on such diagnosis may still be appealed, as set forth in Section 9.5. The member of the Appeals Advisory Panel must support the decision with a Diagnosing Physician Certification.

Section 5.14 Funding.

(a) All aspects of the BAP, including, without limitation, its costs and expenses, payment of Qualified BAP Providers, compensation of the BAP Administrator, and BAP Supplemental Benefits, will be paid from the BAP Fund. Any funds remaining in the BAP Fund at the conclusion of the five-year period for the provision of BAP Supplemental Benefits, as set forth in Sections 5.5 and 5.11, shall be transferred to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

(b) In order to ensure sufficient funds to pay for a baseline assessment examination for each eligible Retired NFL Football Player, as set forth in Section 5.2 and subject to Sections 5.14(a), 23.1(b) and 23.3(d) of this Agreement, the maximum per player BAP Supplemental Benefit payable under this Section, taking into account such factors as the number of Retired NFL Football Players using the BAP and diagnosed with Level 1 Neurocognitive Impairment, shall be determined on the one-year anniversary of the commencement of the BAP by Co-Lead Class Counsel and Counsel for the NFL Parties, in consultation with the BAP Administrator, and with the approval of the Court. The maximum per player benefit will be set at a sufficient level to ensure that there will be sufficient funds, without exceeding the Seventy-Five Million United States Dollars (U.S. \$75,000,000) cap on the BAP Fund, to pay for every eligible Retired NFL Football Player to receive one baseline assessment examination. At the conclusion of the term of the BAP, and at such other times as the Court may direct or as may be requested by Co-Lead Class Counsel or Counsel for the NFL Parties, Co-Lead Class Counsel and Counsel for the NFL Parties will review and adjust, if necessary, this maximum benefit, in consultation with the BAP Administrator and with the approval of the Court, to ensure that there are sufficient funds to pay for all baseline assessment examinations without exceeding the Seventy-Five Million United States Dollar (U.S. \$75,000,000) cap on the BAP Fund.

ARTICLE VI

Monetary Awards for Qualifying Diagnoses

Section 6.1 Eligible Retired NFL Football Players and Representative Claimants will be entitled to Monetary Awards as set forth in this Article.

Section 6.2 Eligibility

(a) A Settlement Class Member who is a Retired NFL Football Player or Representative Claimant is eligible for a Monetary Award if, and only if: (i) the Settlement Class Member timely registered to participate in the Class Action Settlement, as set forth in Section 4.2; (ii) the subject Retired NFL Football Player or deceased Retired NFL Football Player was diagnosed with a Qualifying Diagnosis; and (iii) the Settlement Class Member timely submits a Claim Package, subject to the terms and conditions set forth in ARTICLE VIII.

(b) A Representative Claimant of a deceased Retired NFL Football Player will be eligible for a Monetary Award only if the deceased Retired NFL Football Player died on or after January 1, 2006, or if the Court determines that a wrongful death or survival claim filed by the Representative Claimant would not be barred by the statute of limitations under applicable state law as of: (i) the date the Representative Claimant filed litigation against the NFL (and, where applicable, NFL Properties) relating to the subject matter of these lawsuits, if such a wrongful death or survival claim was filed prior to the Settlement Date; or (ii) the Settlement Date, where no such suit has previously been filed.

Section 6.3 Qualifying Diagnoses

(a) The following, as defined in Exhibit 1, are Qualifying Diagnoses eligible for a Monetary Award: (a) Level 1.5 Neurocognitive Impairment; (b) Level 2 Neurocognitive Impairment; (c) Alzheimer’s Disease; (d) Parkinson’s Disease; (e) Death with CTE; and (f) ALS. All Qualifying Diagnoses must be made by properly credentialed physicians as set forth below for the particular Qualifying Diagnosis, consistent with Exhibit 1 (Injury Definitions).

(b) Following the Effective Date, a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, Alzheimer's Disease, Parkinson's Disease, or ALS shall be made only by Qualified MAF Physicians, except that a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment may also be made by Qualified BAP Providers as set forth in Section 5.2 and consistent with the terms of Exhibit 1 (Injury Definitions).

(i) Any licensed neuropsychologist who assists a Qualified MAF Physician in making a Qualifying Diagnosis must be certified by the American Board of Professional Psychology (ABPP) or the American Board of Clinical

(f) A Qualifying Diagnosis of Death with CTE shall be made only for Retired NFL Football Players who died prior to the ~~date of the Preliminary Final~~ Approval ~~and Class Certification Order~~ Date, through a post-mortem diagnosis made by a board-certified neuropathologist ~~of CTE~~ prior to the Final Approval Date, provided that a Retired NFL Football Player who died between July 7, 2014 and the Final Approval Date shall have until 270 days from his date of death to obtain such a post-mortem diagnosis.

(i) A board-certified neurologist, board-certified neurosurgeon, or other board-certified neuro-specialist physician, who is not a Qualified MAF Physician, between July 1, 2011 and the Effective Date;

(ii) A neurologist, neurosurgeon, or other neuro-specialist physician, who is not board-certified but is otherwise qualified; and

(iii) A physician who is not a Qualified MAF Physician and who is not otherwise identified in Section 6.4(a)(i)-(ii) but who has sufficient qualifications (i) in the field of neurology to make a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, Alzheimer's Disease, Parkinson's Disease, or ALS, or (ii) in the field of neurocognitive disorders to make a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment.

(b) If a review of a Qualifying Diagnosis by a member of the Appeals Advisory Panel is required by Section 6.4(a), the contents of the Claim Package relevant to the Qualifying Diagnosis, including the Claim Form, the Diagnosing Physician Certification, medical records supporting and reflecting the Qualifying Diagnosis, and any other related materials concerning the Qualifying Diagnosis, shall be submitted to a member of the Appeals Advisory Panel for review. The Appeals Advisory Panel member will determine whether the Retired NFL Football Player or deceased Retired NFL Football Player has the Qualifying Diagnosis reported in the Diagnosing Physician Certification, or, where there is no Diagnosing Physician Certification as set forth in Section 8.2(a)(i), reported in the Claim Package submitted by the Representative Claimant. The Appeals Advisory Panel member shall review the Qualifying Diagnosis based on principles generally consistent with the diagnostic criteria set forth in Exhibit 1 (Injury Definitions), including consideration of, without limitation, the qualifications of the diagnosing physician, the supporting medical records and the year and state of medicine in which the Qualifying Diagnosis was made. The Appeals Advisory Panel member also shall confirm that the Qualifying Diagnosis was made by an appropriate physician as set forth in Section 6.3. For the avoidance of any doubt, the review of whether a Qualifying Diagnosis is based on principles generally consistent with the diagnostic criteria set forth in Exhibit 1 (Injury Definitions) does not require identical diagnostic criteria, including without limitation, the same testing protocols or documentation requirements.

(i) The review by a member of the Appeals Advisory Panel under this subsection, absent extraordinary circumstances impacting the schedule of such member, shall be completed within forty-five (45) days of the date on which he or she receives a Settlement Class Member's file, except such time limit may be altered to the extent the volume of files warrants, either by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), or by application by Co-Lead Class Counsel or Counsel for the NFL Parties to the Court. The Qualifying Diagnoses shall generally be reviewed in the order in which they are received.

Section 6.5 Qualified MAF Physicians

(a) Within ninety (90) days after the Effective Date, the Claims Administrator will establish and maintain a list of Qualified MAF Physicians eligible to provide Qualifying Diagnoses. Each Qualified MAF Physician shall be approved by Co-Lead Class Counsel and Counsel for the NFL Parties, which approval shall not be unreasonably withheld. To the extent a Retired NFL Football Player is examined by a Qualified MAF Physician, such visit and examination shall be at the Retired NFL Football Player's own expense.

(b) The Claims Administrator will select Qualified MAF Physicians based on the following criteria: (a) education, training, licensing, credentialing, board certification, and insurance coverage; (b) ability to provide the specified examinations necessary to make Qualifying Diagnoses; (c) ability to provide all required examinations and services in a timely manner; (d) insurance accessibility; and (e) geographic proximity to Retired NFL Football Players. Under no circumstances will a Qualified MAF Physician be selected or approved who has been convicted of a crime of dishonesty, or who is serving on or after the Final Approval Date as a litigation expert consultant or expert witness for an Opt Out, or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint. If selected and approved, under no circumstances shall a Qualified MAF Physician continue to serve in that role if convicted of a crime of dishonesty and/or thereafter retained as a litigation expert consultant or expert witness for an Opt Out, or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint.

(c) In order to be eligible for selection, each Qualified MAF Physician must provide the following information to the Claims Administrator: (a) state professional license number; (b) National Provider Identifier; (c) board-certification information; (d) evidence of proper licensing and insurance coverage under applicable state laws; (e) experience, including number of years as a healthcare provider; (f) primary and additional service locations; (g) mailing and billing addresses; (h) tax identification information; (i) ability to provide all required examinations and services in a timely manner; (j) capacity for new patients; (k) appointment accessibility; (l) languages spoken; (m) criminal record; (n) the percentage of his/her practice related to litigation expert/consulting engagements, including the relative percentage of such expert/consulting performed for plaintiffs, defendants, and court/administrative bodies, and a general description of such engagements, since July 1, 2011; (o) list of all litigation-related engagements as a litigation expert consultant or expert witness arising out of, or relating to, head, brain and/or cognitive injury of athletes; (p) a general description of any past or present salaried, or other professional or consulting relationships with the NFL Parties or Member Clubs; and (q) such other information as the Claims Administrator may reasonably request.

Section 6.6 Modification of Qualifying Diagnoses

(a) Subject to the constraints of Section 6.6(b), following the Effective Date, on a periodic basis not to exceed once every ten (10) years, Co-Lead Class Counsel and Counsel for the NFL Parties agree to discuss in good faith possible

prospective modifications to the definitions of Qualifying Diagnoses and/or the protocols for making Qualifying Diagnoses, in light of generally accepted advances in medical science. No such modifications can be made absent written agreement between Co-Lead Class Counsel and Counsel for the NFL Parties and approval by the Court, and neither Co-Lead Class Counsel nor Counsel for the NFL Parties shall seek modification to the definitions of Qualifying Diagnoses and/or the protocols for making Qualifying Diagnoses other than with the written agreement of the other regarding such modifications.

(b) Monetary Awards, consistent with the terms of this Settlement Agreement, shall compensate Settlement Class Members only in circumstances where a Retired NFL Football Player manifests actual cognitive impairment and/or actual neuromuscular impairment, or a deceased Retired NFL Football Player manifested actual cognitive impairment and/or actual neuromuscular impairment while living. For the avoidance of any doubt, the identification of a condition—for example, through a blood test, genetic test, imaging technique, or otherwise—that has not yet resulted in actual cognitive impairment and/or actual neuromuscular impairment experienced by the Retired NFL Football Player does not qualify as a Qualifying Diagnosis. As such, Co-Lead Class Counsel and Counsel for the NFL Parties have defined the Qualifying Diagnoses to require an actual manifestation of cognitive impairment and/or an actual manifestation of neuromuscular impairment. Consistent with Section 6.6(a), Co-Lead Class Counsel and Counsel for the NFL Parties will address possible advances in science to effectuate this mutual intent. For the avoidance of doubt, this subsection does not apply to the Qualifying Diagnosis of Death with CTE. This subsection also does not alter the Qualifying Diagnoses definitions, as set forth in Exhibit 1.

(c) In no event will modifications be made to the Monetary Award levels in the Monetary Award Grid, except for inflation adjustment(s) as set forth in Section 6.9.

Section 6.7 Determination of Monetary Awards

(a) Settlement Class Members who the Claims Administrator determines are entitled to Monetary Awards will be compensated in accordance with the terms of the Monetary Award Grid and all applicable Offsets, as set forth in Exhibit 3 and below, except such compensation will be reduced by one percent (1%) to the extent that any Derivative Claimants submit for, and are entitled to, a Derivative Claimant Award based upon their relationships with the Retired NFL Football Player, as set forth in ARTICLE VII.

(b) Offsets. All Monetary Awards will be subject to downward adjustments, including based on a Settlement Class Member's age at the time of the Qualifying Diagnosis (as reflected in the Monetary Award Grid, as set forth in Exhibit 3), and as follows:

(i) Number of Eligible Seasons:

- (1) 4.5 Eligible Seasons: - 10%
- (2) 4 Eligible Seasons: - 20%
- (3) 3.5 Eligible Seasons: - 30%
- (4) 3 Eligible Seasons: - 40%
- (5) 2.5 Eligible Seasons: - 50%
- (6) 2 Eligible Seasons: - 60%
- (7) 1.5 Eligible Seasons: - 70%
- (8) 1 Eligible Season: - 80%
- (9) 0.5 Eligible Seasons: - 90%
- (10) 0 Eligible Seasons: - 97.5%

(ii) Medically diagnosed Stroke occurring prior to a Qualifying Diagnosis: - 75%

(iii) Medically diagnosed Traumatic Brain Injury occurring prior to a Qualifying Diagnosis: - 75%

(iv) Non-participation in the BAP by a Retired NFL Football Player in Subclass 1, except where the Qualifying Diagnosis is of ALS or if he receives any Qualifying Diagnosis prior to his deadline to receive a BAP baseline assessment examination as set forth in Section 5.3: - 10%

(c) For purposes of calculating the total number of Eligible Seasons earned by a Retired NFL Football Player or deceased Retired NFL Football Player under this Settlement Agreement, each earned Eligible Season and each earned half of an Eligible Season ~~for which the subject Retired NFL Football Player did not otherwise earn an Eligible Season,~~ will be summed together to reach a total number of Eligible Seasons (e.g., 3.5 Eligible Seasons). except a Retired NFL Football Player may not receive credit for more than one (1) Eligible Season per year (with each year defined to include any spring World League of American Football, NFL Europe League or NFL Europa League season, and the following fall NFL season). By way of example only: (a) a Retired NFL Football Player who was on a NFL Europe League team's active roster on the date of three (3) or more regular season or postseason games during the 2002 spring NFL Europe League season and who was on a Member Club's Active List on the date of three (3) or more regular season or postseason games during the 2002-2003 fall NFL season would receive credit for one (1) Eligible Season for the year; and (b) a Retired

NFL Football Player who was on a NFL Europe League team's active roster on the date of three (3) or more regular season or postseason games during the 2002 spring NFL Europe League season and who was on a Member Club's practice squad for at least eight (8) regular season or postseason games during the 2002-2003 fall NFL season would receive credit for one (1) Eligible Season for the year.

~~(i) For the avoidance of any doubt, seasons in the World League of American Football, the NFL Europe League, or the NFL Europa League are specifically excluded from the calculation of an Eligible Season.~~

(d) If the Retired NFL Football Player receives a Qualifying Diagnosis prior to a medically diagnosed Stroke or a medically diagnosed Traumatic Brain Injury, then the 75% Offset for medically diagnosed Stroke or medically diagnosed Traumatic Brain Injury will not apply. If the Retired NFL Football Player receives a Qualifying Diagnosis subsequent to a medically diagnosed Stroke or a medically diagnosed Traumatic Brain Injury, and if the Settlement Class Member demonstrates, by clear and convincing evidence, that the Qualifying Diagnosis was not causally related to the Stroke or the Traumatic Brain Injury, then the 75% Offset will not apply.

(e) Multiple Offsets will be applied individually and in a serial manner to any Monetary Award. For example, if the Monetary Award before the application of Offsets is \$1,000,000, and two 10% Offsets apply, there will be a 19% aggregate downward adjustment of the award (*i.e.*, application of the first Offset will reduce the award by 10%, or \$100,000, to \$900,000, and application of the second Offset will reduce the award by an additional 10%, or \$90,000, to \$810,000).

Section 6.8 Supplemental Monetary Awards. If, during the term of the Monetary Award Fund, a Retired NFL Football Player who has received a Monetary Award based on a certain Qualifying Diagnosis subsequently is diagnosed with a different Qualifying Diagnosis, the Retired NFL Football Player (or his Representative Claimant, if applicable) may be entitled to a Supplemental Monetary Award. If the Monetary Award level in the Monetary Award Grid ("Grid Level") for the subsequent Qualifying Diagnosis is greater than the Grid Level for the earlier Qualifying Diagnosis, the Retired NFL Football Player (or his Representative Claimant, if applicable) will be entitled to a payment that is equal to the Grid Level for the subsequent Qualifying Diagnosis, after application of all applicable Offsets, minus the Grid Level for the earlier Qualifying Diagnosis, after application of all applicable Offsets, but prior to any deductions for the satisfaction of Liens. In other words, any amounts deducted from the earlier Monetary Award to satisfy Liens will not be considered in the calculation of the Supplemental Monetary Award, which may also require an amount deducted to satisfy any subsequent Liens. (By way of example only, a Retired NFL Football Player who receives a Monetary Award for Level 1.5 Neurocognitive Impairment that is \$1,000,000 after application of all Offsets, which is then reduced by \$20,000 to \$980,000 to satisfy a Lien, and who later receives a Qualifying Diagnosis for Level 2 Neurocognitive Impairment that would pay

\$1,200,000 after application of all Offsets, where there are no additional Liens, shall be entitled to a Supplemental Monetary Award of \$200,000.)

Section 6.9 Inflation Adjustment. Monetary Award amounts set forth in Exhibit 3 will be subject to an annual inflation adjustment, beginning one year after the Effective Date, not to exceed two and a half percent (2.5%), the precise amount subject to the sound judgment of the Special Master (or the Court after expiration of the term of the Special Master) based on consideration of the Consumer Price Index for Urban Consumers (CPI-U).

Section 6.10 Monetary Award Fund Term. The Monetary Award Fund will commence on the Effective Date and will end sixty-five (65) years after the Effective Date.

ARTICLE VII

Derivative Claimant Awards

Section 7.1 All Settlement Class Members who are Derivative Claimants seeking Derivative Claimant Awards must do so through the submission of Derivative Claim Packages containing all required proof, as set forth in Section 8.2(b).

Section 7.2 Eligibility. A Settlement Class Member who is a Derivative Claimant is entitled to a Derivative Claimant Award if, and only if: (a) the Derivative Claimant timely registered to participate in the Class Action Settlement, as set forth in Section 4.2; (b) the Retired NFL Football Player through whom the relationship is the basis of the claim (or the Representative Claimant of a deceased or legally incapacitated or incompetent Retired NFL Football Player through whom the relationship is the basis of the claim) has received a Monetary Award; (c) the Settlement Class Member timely submits a Derivative Claim Package, subject to the terms and conditions set forth in ARTICLE VIII; and (d) the Claims Administrator determines, based on a review of the records provided in the Derivative Claim Package and applicable state law, that the Derivative Claimant has a relationship with the subject Retired NFL Football Player that properly and legally provides the right under applicable state law to sue independently and derivatively.

Section 7.3 Determination of Derivative Claimant Awards. Settlement Class Members who the Claims Administrator determines are entitled to Derivative Claimant Awards will be compensated from the Monetary Award of the Retired NFL Football Player through whom the relationship is the basis of the claim (or his Representative Claimant), and from any Supplemental Monetary Award, in the amount of one percent (1%) of that Monetary Award and any Supplemental Monetary Award. If there are multiple Derivative Claimants asserting valid claims based on the same subject Retired NFL Football Player, the Claims Administrator will divide and distribute the Derivative Claimant Award among those Derivative Claimants pursuant to the laws of the domicile of the Retired NFL Football Player (or his Representative Claimant, if any).

ARTICLE VIII

Submission and Review of Claim Packages and Derivative Claim Packages

Section 8.1 All Settlement Class Members applying for Monetary Awards or Derivative Claimant Awards must submit Claim Packages or Derivative Claim Packages to the Claims Administrator.

Section 8.2 Content

(a) The content of Claim Packages will be agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and will include, without limitation: (i) a Claim Form with the Personal Signature of the Retired NFL Football Player (or Representative Claimant) either on the Claim Form or on an acknowledgement form verifying the contents of the Claim Form; (ii) a Diagnosing Physician Certification; (iii) medical records reflecting the Qualifying Diagnosis; (iv) a HIPAA-compliant authorization form; and (v) records in the possession, custody or control of the Settlement Class Member demonstrating employment and participation in NFL Football.

(i) Representative Claimants of Retired NFL Football Players who died prior to the Effective Date do not need to include a Diagnosing Physician Certification in the Claim Package if the physician who provided the Qualifying Diagnosis, as set forth in Exhibit 1, also died prior to the Effective Date or was deemed by a court of competent jurisdiction legally incapacitated or incompetent prior to the Effective Date. Instead, the Representative Claimant must provide evidence of that physician's death, incapacity or incompetence and of the qualifications of the diagnosing physician. For the avoidance of any doubt, all other content of Claim Packages must be submitted, including medical records reflecting the Qualifying Diagnosis.

(ii) In cases where a deceased Retired NFL Football Player received a Qualifying Diagnosis but the medical records reflecting the Qualifying Diagnosis are unavailable because of a force majeure type event (e.g., flood, hurricane, fire), the Claims Administrator, upon petition by the Representative Claimant, may determine the Claim Package to be valid without the medical records if the Representative Claimant makes a showing of a reasonable effort to obtain the medical records from any available source and presents a certified death certificate referencing the Qualifying Diagnosis made while the Retired NFL Football Player was living. For the avoidance of any doubt, the Claims Administrator has the sole discretion to determine the sufficiency of this showing, subject to the appeal rights set forth in Section 9.5. If the unavailability of medical records also causes the diagnosing physician to be unable to provide a Diagnosing Physician Certification, the Claims Administrator, upon petition by the Representative Claimant, and in addition to the presentation of a certified death certificate referencing the Qualifying Diagnosis made while the Retired NFL Football Player was living, may instead allow an accompanying

sworn affidavit from the diagnosing physician attesting to the reasons why the diagnosing physician is unable to provide a Diagnosing Physician Certification without the medical records. The Claims Administrator has the sole discretion to determine the sufficiency of this showing, subject to the appeal rights set forth in Section 9.5.

(iii) In cases where a Retired NFL Football Player has received a Qualifying Diagnosis and the diagnosing physician who provided the Qualifying Diagnosis, as set forth in Exhibit 1, has died or has been deemed by a court of competent jurisdiction legally incapacitated or incompetent prior to the Effective Date, or otherwise prior to completing a Diagnosing Physician Certification, the Retired NFL Football Player (or his Representative Claimant, if applicable) may obtain a Diagnosing Physician Certification from a separate qualified physician for the Qualifying Diagnosis as specified in Exhibit 1 based on an independent examination by the qualified physician and a review of the Retired NFL Football Player's medical records that formed the basis of the Qualifying Diagnosis by the deceased or legally incapacitated or incompetent physician. If the same Qualifying Diagnosis is found by both doctors, the date of Qualifying Diagnosis used to calculate Monetary Awards shall be the date of the earlier Qualifying Diagnosis.

(b) The content of Derivative Claim Packages will be agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and will include, without limitation: (i) a Derivative Claim Form with the Personal Signature of the Derivative Claimant either on the Derivative Claim Form or on an acknowledgement form verifying the contents of the Derivative Claim Form; and (ii) records sufficient to verify the relationship with the subject Retired NFL Football Player or deceased Retired NFL Football Player that properly and legally provides the Derivative Claimant the right under applicable state law to sue independently and derivatively.

(c) All statements made in Claim Forms, Derivative Claim Forms, any acknowledgement forms, and Diagnosing Physician Certifications will be sworn statements under penalty of perjury.

(d) Each Settlement Class Member has the obligation to submit to the Claims Administrator all of the documents required in Section 8.2 to receive a Monetary Award or Derivative Claimant Award.

Section 8.3 Submission

(a) Settlement Class Members must submit Claim Packages and Derivative Claim Packages to the Claims Administrator in accordance with Section 30.15.

(i) Claim Packages must be submitted to the Claims Administrator no later than two (2) years after the date of the Qualifying Diagnosis or within two (2) years after the Settlement Class Supplemental Notice is posted on the Settlement Website, whichever is later. Failure to comply with this two (2) year time

limitation will preclude a Monetary Award for that Qualifying Diagnosis, unless the Settlement Class Member can show substantial hardship that extends beyond the Retired NFL Football Player's Qualifying Diagnosis and that precluded the Settlement Class Member from complying with the two (2) year deadline, and submits the Claim Package within four (4) years after the date of the Qualifying Diagnosis or after the Settlement Class Supplemental Notice is posted on the Settlement Website, whichever is later.

(ii) Derivative Claim Packages must be submitted to the Claims Administrator no later than thirty (30) days after the Retired NFL Football Player through whom the relationship is the basis of the claim (or the Representative Claimant of a deceased or legally incapacitated or incompetent Retired NFL Football Player through whom the relationship is the basis of the claim) receives a Notice of Monetary Award Claim Determination that provides a determination that the Retired NFL Football Player (or his Representative Claimant) is entitled to a Monetary Award. Failure to comply with this time limitation will preclude a Derivative Claimant Award based on that Monetary Award.

(b) Each Settlement Class Member will promptly notify the Claims Administrator of any changes or updates to the information the Settlement Class Member has provided in the Claim Package or Derivative Claim Package, including any change in mailing address.

(c) All information submitted by Settlement Class Members to the Claims Administrator will be recorded in a computerized database that will be maintained and secured in accordance with all applicable federal, state and local laws, regulations and guidelines, including, without limitation, HIPAA. The Claims Administrator must ensure that information is recorded and used properly, that an orderly system of data management and maintenance is adopted, and that the information is retained under responsible custody. The Claims Administrator will keep the database in a form that grants access for claims administration use, but otherwise restricts access rights, including to employees of the Claims Administrator who are not working on claims administration for the Class Action Settlement.

(i) The Claims Administrator and Lien Resolution Administrator, and their respective agents, representatives, and professionals who are administering the Class Action Settlement, will have access to all information submitted by Settlement Class Members to the Claims Administrator and/or Lien Resolution Administrator necessary to perform their responsibilities under the Settlement Agreement.

(ii) All information submitted by Settlement Class Members to the Claims Administrator will be treated as confidential, as set forth in Section 17.2.

Section 8.4 Preliminary Review

(a) Within forty-five (45) days of the date on which the Claims Administrator receives a Claim Package or Derivative Claim Package from a Settlement Class Member, the Claims Administrator will determine the sufficiency and completeness of the required contents, as set forth in Section 8.2. To the extent the volume of claims warrants, this deadline may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof).

(b) The Claims Administrator will reject a claim submitted by a Settlement Class Member, subject to the cure provisions of Section 8.5, if the Claims Administrator has not received all required content.

Section 8.5 Deficiencies and Cure. For rejected Claim Packages or Derivative Claim Packages, the Claims Administrator will send a Notice of Deficiency to the Settlement Class Member, which Notice will contain a brief explanation of the Deficiency(ies) giving rise to rejection of the Claim Package or Derivative Claim Package, and will, where necessary, request additional information and/or documentation. The Claims Administrator will make available to the Settlement Class Member through a secure online web interface any document(s) with a Deficiency needing correction or, upon request from the Settlement Class Member, will mail the Settlement Class Member a copy of such document(s). The Notice of Deficiency will be sent no later than forty-five (45) days from the date of receipt of the Claim Package or Derivative Claim Package by the Claims Administrator. To the extent the volume of claims warrants, this deadline may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof). The Notice of Deficiency will contain a recommendation for how, if possible, the Settlement Class Member can cure the Deficiency, and will provide a reasonable deadline not less than 120 days (from the date the Notice of Deficiency is sent to the Settlement Class Member) for the Settlement Class Member to submit Deficiency cure materials. Within that time period, the Settlement Class Member will have the opportunity to cure all Deficiencies and provide any requested additional information or documentation, except that the failure to submit timely a Claim Package or Derivative Claim Package in accordance with the terms of this Settlement Agreement cannot be cured other than upon a showing of substantial hardship as set forth in Section 8.3(a)(i). Any Claim Package or Derivative Claim Package that continues to suffer from a Deficiency identified on the Notice of Deficiency following the submission of documentation intended to cure the Deficiency will be denied by the Claims Administrator.

Section 8.6 Verification and Investigation

(a) Each Settlement Class Member claiming a Monetary Award or Derivative Claimant Award will authorize the Claims Administrator and/or

Lien Resolution Administrator, as applicable, consistent with HIPAA and other applicable privacy laws, to verify facts and details of any aspect of the Claim Package or Derivative Claim Package and/or the existence and amounts, if any, of any Liens. The Claims Administrator or Lien Resolution Administrator, at its sole discretion, may request additional documentation, which each Settlement Class Member agrees to provide in order to claim a Monetary Award or Derivative Claimant Award.

(b) The Claims Administrator will have the discretion to undertake or cause to be undertaken further verification and investigation, including into the nature and sufficiency of any Claim Package or Derivative Claim Package documentation, including, without limitation, as set forth in Section 10.3.

ARTICLE IX

Notice of Claim Determinations, Payments, and Appeals

Section 9.1 Monetary Award Determination. Based upon its review of the Claim Package, and the results of any investigations of the Settlement Class Member's claim, the Claims Administrator will determine whether a Settlement Class Member qualifies for a Monetary Award and the amount of any such Award. In order to decide whether a Settlement Class Member is entitled to a Monetary Award, and at what level, the Claims Administrator will determine whether the Retired NFL Football Player or deceased Retired NFL Football Player has a Qualifying Diagnosis according to the Diagnosing Physician Certification, including consideration of, without limitation, the qualifications of the diagnosing physician, or in the case of a deceased Retired NFL Football Player diagnosed by a deceased physician, as set forth in Section 8.2(a)(i), according to the supporting medical records. If the Claims Administrator determines that there is a Qualifying Diagnosis, it will determine the level of Monetary Award based on the Monetary Award Grid (attached as Exhibit 3) and a review of the Diagnosing Physician Certification for the age at the time of the Qualifying Diagnosis, and will review the Claim Package, including the Claim Form and medical records reflecting the Qualifying Diagnosis, for information relating to all other Offsets, and must apply all applicable Offsets to the Monetary Award. For the avoidance of any doubt, the Claims Administrator has no discretion to make a Monetary Award determination other than as set forth above.

(a) Evidence of NFL Employment and Participation. To the extent that the Claims Administrator determines that the Settlement Class Member has provided in the Claim Package insufficient evidence of the Retired NFL Football Player's NFL employment and participation to substantiate the claimed Eligible Seasons, the Claims Administrator will request that the NFL Parties and Member Clubs provide any employment or participation records of the Retired NFL Football Player in their reasonable possession, custody or control, which the NFL Parties and Member Clubs will provide in good faith. The Claims Administrator will consider all of the evidence provided to it by the Retired NFL Football Player and the NFL Parties and Member Clubs in determining the appropriate number of Eligible Seasons to apply to the Retired NFL Football Player's claim. The Claims Administrator shall credit only the Eligible Seasons substantiated by the overall evidence. To the extent there is no

objective evidence regarding an Eligible Season claimed by the Retired NFL Football Player beyond his sworn statement, the Claims Administrator will take into account the reasons offered by the Retired NFL Football Player for the lack of such objective evidence in arriving at its final decision.

(i) The assertion of NFL employment and participation in more than one (1) Eligible Season, however, must be substantiated by the Retired NFL Football Player with objective evidence beyond his sworn statement, the sufficiency of which shall be in the Claims Administrator's discretion. In the event there is no objective evidence of NFL employment and participation in more than one (1) Eligible Season, the Claims Administrator may credit the Retired NFL Football Player with one (1) or fewer Eligible Seasons consistent with Section 9.1(a).

(b) Timing of Monetary Award Determination. The Claims Administrator will make such determination and will send a corresponding Notice of Monetary Award Claim Determination to the Settlement Class Member and the NFL Parties no later than sixty (60) days from the later of: (i) the date when a completed Claim Package that is free from all Deficiencies is received by the Claims Administrator; (ii) the date, if any, when all Deficiencies with a Settlement Class Member's Claim Package have been deemed cured by the Claims Administrator; (iii) the date, if any, on which the additional information or documentation identified in the Notice of Deficiency, if applicable, has been timely provided to the Claims Administrator; (iv) the date of a decision by a member of the Appeals Advisory Panel under Section 8.6(b); or (v) the date on which the Settlement Class Member no longer has the right to cure such Deficiencies or provide additional information or documentation, in accordance with Section 8.5; provided, however, that to the extent the volume of claims warrants, these deadlines may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof).

(c) Notice Content

(i) Notices of Monetary Award Claim Determination that provide an adverse determination will include a short statement regarding the reasons for the adverse determination and information regarding how the Settlement Class Member can appeal the determination, as set forth in Section 9.7. An adverse Notice of Monetary Award Claim Determination does not preclude a Settlement Class Member from submitting a Claim Package in the future for a Monetary Award should the Retired NFL Football Player's medical condition change. The Claims Administrator shall develop reasonable procedures and rules to ensure the right of Settlement Class Members to submit a Claim Package for the same or different Qualifying Diagnoses in the future, while preventing unwarranted repetitive claims that do not disclose materially changed circumstances from prior claims made by the Settlement Class Member.

(ii) Notices of Monetary Award Claim Determination that provide a determination that the Settlement Class Member is entitled to a Monetary Award will provide: (a) the net amount of that Monetary Award after application of Offsets; (b) a listing of the Offsets applied to that Monetary Award; (c) the Lien Resolution Administrator's determination of any amount deducted from the Monetary Award to satisfy identified Liens, as set forth in ARTICLE XI; or the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Monetary Award under which identified Liens shall be resolved, as set forth in ARTICLE XI; (d) information regarding how the Settlement Class Member can appeal the Monetary Award determination, as set forth in Section 9.7; and (e) information regarding the timing of payment, as set forth in Section 9.3.

(d) NFL Parties' and Co-Lead Class Counsel's Review of Claim Packages. If a Notice of Monetary Award Determination provides a determination that the Settlement Class Member is entitled to a Monetary Award, the Claims Administrator will make the Settlement Class Member's Claim Package and the review determinations available to the NFL Parties and Co-Lead Class Counsel.

Section 9.2 Derivative Claimant Award Determination. Based upon its review of the Derivative Claim Package, and the results of any investigations of the Derivative Claimant's claim, the Claims Administrator will determine whether a Derivative Claimant qualifies for a Derivative Claimant Award, as set forth in Section 7.3.

(a) Timing of Derivative Claimant Award Determination. The Claims Administrator will make such determination and will send a corresponding Notice of Derivative Claimant Award Determination to the Settlement Class Member and the NFL Parties no later than thirty (30) days from the later of: (i) the date when a completed Derivative Claim Package that is free from all Deficiencies is received by the Claims Administrator; (ii) the date when all Deficiencies with a Settlement Class Member's Derivative Claim Package have been determined by the Claims Administrator to be satisfactorily cured; (iii) the date, if any, on which the additional information or documentation identified in the Notice of Deficiency, if applicable, has been timely provided to the Claims Administrator; or (iv) the date on which the Settlement Class Member no longer has the right to cure such Deficiencies or provide additional information or documentation, in accordance with Section 8.5; provided, however, that to the extent the volume of claims warrants, these deadlines may be extended by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof).

(b) Notice Content

(i) Notices of Derivative Claimant Award Determination that provide an adverse determination will include a short statement regarding the reasons for the adverse determination and information regarding how the Settlement Class Member can appeal the determination, as set forth in Section 9.7. An

adverse Notice of Derivative Claimant Award Determination does not preclude a Derivative Claimant from submitting a Derivative Claim Package in the future for a Derivative Claimant Award should the Retired NFL Football Player receive a Supplemental Monetary Award or succeed on an appeal of a previously denied claim for a Monetary Award.

(ii) Notices of Derivative Claimant Award Determination that provide a determination that the Settlement Class Member is entitled to a Derivative Claimant Award will provide: (a) the amount of that Derivative Claimant Award; (b) the Lien Resolution Administrator's determination of any amount deducted from the Derivative Claimant Award to satisfy identified Liens, as set forth in ARTICLE XI; or the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Derivative Claimant Award under which identified Liens will be resolved, as set forth in ARTICLE XI; (c) information regarding how the Derivative Claimant can appeal the Derivative Claimant Award determination, as set forth in Section 9.7; and (d) information regarding the timing of payment, as set forth in Section 9.4.

(c) NFL Parties' and Co-Lead Class Counsel's Review of Derivative Claim Packages. If a Notice of Derivative Claimant Award Determination provides a determination that the Settlement Class Member is entitled to a Derivative Claimant Award, the Claims Administrator will make the Settlement Class Member's Claim Package and the review determinations available to the NFL Parties and Co-Lead Class Counsel.

Section 9.3 Remuneration and Payment of Monetary Awards.

(a) The Claims Administrator will promptly pay any Monetary Awards to Settlement Class Members who qualify under the terms of the Monetary Award Grid and all applicable Offsets after the Claims Administrator sends a Notice of Monetary Award Claim Determination; provided, however, any such payment will not occur until after the completion of the processes for (i) appealing Monetary Award determinations, as set forth in Section 9.7; (ii) auditing claims and investigating claims for fraud, as set forth in Section 10.3; (iii) identifying and satisfying Liens, as set forth in ARTICLE XI; and (iv) determining if any Derivative Claimants have filed timely, and are entitled to, Derivative Claimant Awards based on their relationship with the subject Retired NFL Football Player. Such payment shall be made consistent with Section 23.3(b)(iv) of this Settlement Agreement.

(b) In connection with a Monetary Award issued to a Representative Claimant, the Claims Administrator will abide by all substantive laws of the domicile of such Representative Claimant concerning distribution and will not issue payment until the Claims Administrator has received from the Settlement Class Member proof of such court approvals or other documents necessary to authorize payment. Where short form procedures exist concerning such distribution that do not require domiciliary court approval or supervision, the Claims Administrator is authorized to adopt those procedures as part of the claims administration process

applicable to such Representative Claimant. The Claims Administrator also is authorized to adopt procedures as are approved by the Court to aid or facilitate in the payment of claims to minor, incapacitated or incompetent Settlement Class Members or their guardians.

(c) Upon the completion of the Monetary Award Fund term, as set forth in Section 6.10, the Court shall determine the proper disposition of any funds remaining in the Monetary Award Fund consistent with the purpose of this Settlement, including to promote safety and injury prevention with respect to football players and/or the treatment or prevention of traumatic brain injuries.

Section 9.4 Remuneration and Payment of Derivative Claimant Awards

(a) The Claims Administrator will promptly pay any Derivative Claimant Awards to Settlement Class Members who qualify; provided, however, any such payment will not occur until after expiration or completion of: (i) the time period for Derivative Claimants to file Derivative Claim Packages, as set forth in Section 8.3(a)(ii), has expired; (ii) the process for appealing Derivative Claimant Awards, including appeals by any other Derivative Claimants asserting claims based on the same Retired NFL Football Player, as set forth in Section 9.7; (iii) the process for auditing claims and investigating claims for fraud, set forth in Section 10.3; and (iv) the process for identifying and satisfying Liens, as set forth in ARTICLE XI. Such payment shall be made consistent with Section 23.3(b)(iv) of this Settlement Agreement.

(b) In paying a Derivative Claimant Award to a minor, the Claims Administrator will abide by all substantive laws of the domicile of such Settlement Class Member concerning distribution and will not issue payment until the Claims Administrator has received from the Settlement Class Member proof of such court approvals or other documents necessary to authorize payment. Where short form procedures exist concerning such distribution that do not require domiciliary court approval or supervision, the Claims Administrator is authorized to adopt those procedures as part of the claims administration process applicable to such Settlement Class Members. The Claims Administrator also is authorized to adopt procedures as are approved by the Court to aid or facilitate in the payment of claims to minor, incapacitated or incompetent Settlement Class Members or their guardians.

Section 9.5 Scope of Appeals. The Claims Administrator's determination as to whether a Settlement Class Member is entitled to a Monetary Award or Derivative Claimant Award under this Settlement Agreement, and/or the calculation of the Monetary Award or Derivative Claimant Award, is appealable by the Settlement Class Member, Co-Lead Class Counsel, or the NFL Parties based on their respective good faith belief that the determination by the Claims Administrator was incorrect.

Section 9.6 Appellant Fees and Limitations

(a) Any Settlement Class Member taking an appeal will be charged a fee of One Thousand United States dollars (U.S. \$1,000) by the Claims Administrator that must be paid before the appeal may proceed, which fee will be refunded if the Settlement Class Member's appeal is successful. If the appeal is unsuccessful, the fee will be paid to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

(i) Settlement Class Members may make a hardship request to the Claims Administrator and ask that the fee of One Thousand United States dollars (U.S. \$1,000) be waived for good cause. The Claims Administrator will require that the Settlement Class Member provide such financial information as may be necessary to decide the request to waive the fee, which request shall be approved or denied in the Claims Administrator's sole discretion.

(b) The NFL Parties may appeal Monetary Award or Derivative Claimant Award determinations in good faith. To the extent that Co-Lead Class Counsel believe that the NFL Parties are submitting vexatious, frivolous or bad faith appeals, Co-Lead Class Counsel may petition the Court for appropriate relief.

Section 9.7 Submissions on Appeals

(a) The appellant must submit to the Court his or her notice of appeal, using an Appeals Form to be agreed upon by Co-Lead Class Counsel and the NFL Parties and provided by the Claims Administrator, with written copy to the appellee(s) Settlement Class Member or the NFL Parties (as applicable), Co-Lead Class Counsel, and to the Claims Administrator, no later than thirty (30) days after receipt of a Notice of Monetary Award Claim Determination or Notice of Derivative Claimant Award Determination. Appellants must present evidence in support of their appeal, and any written statements may not exceed five (5) single-spaced pages in length.

(b) The appellee(s) may submit a written opposition to the appeal no later than thirty (30) days after receipt of the Appeals Form. This written opposition must not exceed five (5) single-spaced pages in length. The Court will not deem the lack of an opposition to be an admission regarding the merits of the appeal. The appellant may not submit a reply.

(c) Co-Lead Class Counsel may submit a written statement in support of or opposition to the appeal no later than fifteen (15) days after receipt of the Appeals Form or an appellee's written opposition. This written statement must not exceed five (5) single-spaced pages in length. The Court will not deem the lack of a statement to be an admission regarding the merits of the appeal. The appellant and appellee(s) may each submit a reply.

Section 9.8 Review and Decision. The Court will make a determination based upon a showing by the appellant of clear and convincing evidence.

The Court may be assisted, in its discretion, by any member of the Appeals Advisory Panel and/or an Appeals Advisory Panel Consultant. The decision of the Court will be final and binding.

(a) Appeals Advisory Panel and Appeals Advisory Panel Consultants

(i) Within ninety (90) days after the Effective Date, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to, and jointly recommend to the Court for appointment, the members of the Appeals Advisory Panel and the Appeals Advisory Panel Consultants. Under no circumstances may a member of the Appeals Advisory Panel or an Appeals Advisory Panel Consultant have been convicted of a crime of dishonesty, or serve, on or after the Final Approval Date, as a litigation expert consultant or expert witness in connection with litigation relating to the subject matter of the Class Action Complaint for a party, a Member Club, or an Opt Out, or his, her or its counsel. If selected and approved, under no circumstances shall an Appeals Advisory Panel member or Appeals Advisory Panel Consultant continue to serve in that role if convicted of a crime of dishonesty and/or thereafter retained as an expert consultant or expert witness in connection with litigation relating to the subject matter of the Class Action Complaint by a party, a Member Club, or an Opt Out, or his, her or its counsel.

(ii) Co-Lead Class Counsel and Counsel for the NFL Parties will jointly retain the members of the Appeals Advisory Panel and the Appeals Advisory Panel Consultants appointed by the Court.

(iii) Upon request of the Court or the Special Master, the Appeals Advisory Panel will take all steps necessary to provide sound advice with respect to medical aspects of the Class Action Settlement.

(iv) The Court will oversee the Appeals Advisory Panel and the Appeals Advisory Panel Consultants, and may, in its discretion, request reports or information from the Appeals Advisory Panel or the Appeals Advisory Panel Consultants.

(v) Compensation of the Appeals Advisory Panel and Appeals Advisory Panel Consultants, at a reasonable rate for their time agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, will be paid out of the Monetary Award Fund, except that compensation of an Appeals Advisory Panel member or Appeals Advisory Panel Consultant will be paid out of the BAP fund for reviewing and advising the Court whether a Retired NFL Football player has Level 1 Neurocognitive Impairment, Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, or none, in cases where there are conflicting diagnoses by Qualified BAP Providers.

(vi) Members of the Appeals Advisory Panel or the Appeals Advisory Panel Consultants may be replaced by joint motion made by Co-

Lead Class Counsel and Counsel for the NFL Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If any member of the Appeals Advisory Panel or an Appeals Advisory Panel Consultant resigns, dies, is replaced, or is otherwise unable to continue in his or her position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed member for appointment by the Court.

(b) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master will establish and implement procedures to promptly detect and resolve possible conflicts of interest between members of the Appeals Advisory Panel or Appeals Advisory Panel Consultants, on the one hand, and an appellant or appellee(s), on the other hand. Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) may modify such procedures in the future, if appropriate. For the avoidance of any doubt, employment of the Special Master by any Party as an expert in unrelated matters will not constitute a conflict of interest.

(c) Liability. The Parties, Class Counsel, Counsel for the NFL Parties, and the Special Master, and their respective Affiliates, will not be liable for any act, or failure to act, of a member of the Appeals Advisory Panel or an Appeals Advisory Panel Consultant.

ARTICLE X

Class Action Settlement Administration

Section 10.1 Special Master

(a) Appointment and Oversight

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Class Counsel will request that the Court appoint, in consultation with Co-Lead Class Counsel and Counsel for the NFL Parties, a Special Master pursuant to Federal Rule of Civil Procedure 53.

(ii) It is the intention of the Parties that the Special Master will perform his or her responsibilities and take all steps necessary to faithfully oversee the implementation and administration of the Settlement Agreement. The Special Master shall be appointed for a term of five (5) years commencing on the Effective Date. The term of the Special Master shall be extended, or a new Special Master shall be appointed, for additional five-year terms for the life of the Settlement Agreement, unless the Court determines, in consultation with Co-lead Class Counsel and Counsel for the NFL Parties, that the Special Master's role is no longer necessary.

(iii) The Special Master will maintain at all times appropriate and sufficient bonding insurance in connection with his or her performance

of responsibilities under the Settlement Agreement. The cost for this insurance will be paid out of the Monetary Award Fund.

(iv) The Court may, at its sole discretion, request reports or information from the Special Master. The Special Master will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs. The Claims Administrator may assist with such reports if requested by the Special Master.

(v) Following the five (5) year term of the Special Master, and any extension(s) thereof, oversight of the administration of the Class Action Settlement will revert to the Court.

(b) Roles and Responsibilities

(i) The Special Master will, among other responsibilities set forth in this Settlement Agreement:

(1) Provide reports or information that the Court may, at its sole discretion, request from the Special Master, who will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs;

(2) Oversee complaints raised by Co-Lead Class Counsel, Counsel for the NFL Parties, the BAP Administrator, Claims Administrator and/or the Lien Resolution Administrator regarding aspects of the Class Action Settlement;

(3) Hear appeals of registration determinations, if requested by the Court, as set forth in Section 4.3(a)(iv);

(4) Oversee the BAP Administrator, Claims Administrator and Lien Resolution Administrator, as set forth in Section 5.6(a)(iv), Section 10.2(a)(iv), and Section 11.1(a)(iv), and receive monthly and annual reports from those Administrators; and

(5) Oversee fraud detection and prevention procedures, and review and decide the appropriate disposition of potentially fraudulent claims as further specified in Section 10.3(i).

(c) Compensation and Expenses. Annual compensation of the Special Master will not exceed Two Hundred Thousand United States dollars (U.S. \$200,000). The annual compensation and reasonable out-of-pocket costs and expenses of the Special Master directly incurred as a result of the performance of his or her responsibilities will be paid out of the Monetary Award Fund. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the Special Master's out-of-pocket costs and expenses, in which case the Court will determine the reasonableness of such costs and expenses. If the Court determines that

any costs and expenses are unreasonable, the Special Master will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the Special Master will refund that amount to the Monetary Award Fund.

(d) Replacement. The Court, in its discretion, can replace the Special Master for good cause. If the Special Master resigns, dies, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties may file a motion for the appointment by the Court of a new Special Master.

(e) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the Special Master, on the one hand, and Settlement Class Members (and counsel individually representing them, if any), Class Counsel, the NFL Parties, Counsel for the NFL Parties, the BAP Administrator, the Claims Administrator, or the Lien Resolution Administrator, on the other hand. Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval of the Court, may modify such procedures in the future, if appropriate. For the avoidance of any doubt, employment of the Special Master by any Party as an expert in unrelated matters will not constitute a conflict of interest.

Section 10.2 Claims Administrator

(a) Appointment and Oversight

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Class Counsel will request that the Court appoint BrownGreer PLC as Claims Administrator. Within ten (10) days after the Effective Date, Co-Lead Class Counsel will retain the Claims Administrator appointed by the Court.

(ii) Co-Lead Class Counsel's retention agreement with the Claims Administrator will provide that the Claims Administrator will perform its responsibilities and take all steps necessary to faithfully implement and administer the Settlement Agreement, and will require that the Claims Administrator maintain at all times appropriate and sufficient bonding insurance in connection with its performance of its responsibilities under the Settlement Agreement.

(iii) The Court may, at its sole discretion, request reports or information from the Claims Administrator. The Claims Administrator will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs.

(iv) The Special Master, for the duration of his or her term, will oversee the Claims Administrator, and may, at his or her sole discretion, request reports or information from the Claims Administrator.

(v) Beyond the reporting requirements set forth in Section 10.2(a)(iii)-(iv), beginning one month after the Effective Date, the Claims Administrator will issue a regular monthly report to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, and Counsel for the NFL Parties during the first three years of the Monetary Award Fund, and thereafter on a quarterly basis or as reasonably agreed upon by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and the NFL Parties, regarding the status and progress of claims administration. The monthly (or quarterly) report will include, without limitation: (a) the monthly and total number of Settlement Class Members who registered timely, and the biographical information for each Settlement Class Member who registered timely in the preceding month, as set forth in Section 4.2(c); (b) the identity of each Settlement Class Member who submitted a Claim Package or Derivative Claim Package in the preceding month, the review status of such package (*e.g.*, under preliminary review, subject to a Notice of Deficiency, subject to verification and investigation, received a Notice of Claim Determination), and the monthly and total number of Settlement Class Member claims for Monetary Awards and Derivative Claimant Awards; (c) the monthly and total number of Monetary Awards and Derivative Claimant Awards paid; (d) the monthly and total number of each Qualifying Diagnosis for which a Monetary Award has been paid; (e) the monthly and total number of Settlement Class Members for whom appeals are pending regarding Monetary Awards and Derivative Claimant Awards; (f) the monthly identification/breakdown of physicians diagnosing Qualifying Diagnoses and/or law firms representing Settlement Class Members who submitted claims for Monetary Awards and Derivative Claimant Awards; (g) the monthly expenses/administrative costs, including a summary accounting of the administrative expenses incurred by the Claims Administrator; and (h) any other information requested by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(vi) Beginning on the first January after the Effective Date, the Claims Administrator will provide annual financial reports to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel and Counsel for the NFL Parties, based on information from the preceding year, regarding: (a) the number of Settlement Class Members, broken down by Qualifying Diagnosis, who received Monetary Awards, and the corresponding number of Settlement Class Members who sought but were found by the Claims Administrator or the Court not to qualify for Monetary Awards; (b) the number of Settlement Class Members who received Derivative Claimant Awards, and the corresponding number of Settlement Class Members who sought but were found by the Claims Administrator or the Court not to qualify for Derivative Claimant Awards; (c) the monetary amounts paid through Monetary Awards and Derivative Claimant Awards, including the monetary amounts over the term of the Class Action Settlement; (d) the number of Settlement Class Members for whom appeals are pending regarding Monetary Awards and Derivative Claimant Awards; (e) the identification/breakdown of physicians diagnosing Qualifying Diagnoses and/or law firms representing Settlement Class Members who submitted claims for Monetary Awards and Derivative Claimant

Awards; (f) expenses/administrative costs, including a summary accounting of the administrative expenses incurred by the Claims Administrator; (g) the projected expenses/administrative costs for the remainder of the Monetary Award Fund term; (h) the monies remaining in the Monetary Award Fund; and (i) any other information requested by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, or Counsel for the NFL Parties.

(vii) The NFL Parties may elect, at their own expense, to cause an audit to be performed by a certified public accountant of the financial records of the Claims Administrator, and the Claims Administrator shall cooperate in good faith with the audit. Audits may be conducted at any time during the term of the Monetary Award Fund. Complete copies of the audit findings report will be provided to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel, and Counsel for the NFL Parties.

(b) Roles and Responsibilities

(i) The Claims Administrator will, among other responsibilities set forth in this Settlement Agreement:

(1) Maintain the Settlement Website, as set forth in Section 4.1(a);

(2) Maintain an automated telephone system to provide information about the Class Action Settlement, as set forth in Section 4.1(b);

(3) Establish and administer both online and hard copy registration methods, as set forth in Section 4.2(a);

(4) Review a purported Settlement Class Member's registration and determine its validity, as set forth in Section 4.3;

(5) Process and review Claim Packages and Derivative Claim Packages, as set forth in ARTICLE VIII;

(6) Determine whether Settlement Class Members who submit Claim Packages and Derivative Claim Packages are entitled to Monetary Awards or Derivative Claimant Awards, as set forth in ARTICLE VI and ARTICLE VII;

(7) Audit Claim Packages and Derivative Claim Packages, and establish and implement procedures to detect and prevent fraudulent submissions to, and payments of fraudulent claims from, the Monetary Award Fund, as set forth in Section 10.3; and

(8) Perform such other tasks reasonably necessary to accomplish the goals contemplated by this Settlement Agreement, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties.

(c) Compensation and Expenses. Reasonable compensation of the Claims Administrator, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and reasonable out-of-pocket costs and expenses directly incurred as a result of the Claims Administrator's responsibilities set forth in this Settlement Agreement will be paid out of the Monetary Award Fund. The Claims Administrator shall submit an annual budget to the Court for review and approval. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the Claims Administrator's out-of-pocket costs and expenses, in which case the Court will determine (or may, in its discretion, refer the challenge to the Special Master to determine) the reasonableness of such costs and expenses. If the Court or Special Master, as applicable, determines that any costs and expenses are unreasonable, the Claims Administrator will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the Claims Administrator will refund that amount to the Monetary Award Fund.

(d) Liability. The Parties, Class Counsel, Counsel for the NFL Parties, and the Special Master, and their respective Affiliates, will not be liable for any act, or failure to act, of the Claims Administrator.

(e) Replacement. The Claims Administrator may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If the Claims Administrator resigns, dies, is replaced, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties will jointly recommend a new proposed Claims Administrator for appointment by the Court.

(f) Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, the Special Master and the Claims Administrator will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the Claims Administrator, including, without limitation, its executive leadership team and all employees working on the Class Action Settlement, on the one hand, and Settlement Class Members and their counsel (if any), the NFL Parties, Counsel for the NFL Parties, or the Special Master, on the other hand. Co-Lead Class Counsel, Counsel for the NFL Parties, and the Claims Administrator, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), may modify such procedures in the future, if appropriate. Notwithstanding anything herein to the contrary, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master understand that the Claims Administrator regularly provides settlement claims administration and other related services to settling parties and their attorneys, and the Special Master, Co-Lead Class Counsel, and Counsel for the NFL Parties acknowledge and agree that it shall not be a conflict of

interest for the Claims Administrator to provide such services to such individuals or to receive compensation for such work.

Section 10.3 Audit Rights and Detection and Prevention of Fraud

(a) Co-Lead Class Counsel and the NFL Parties each will have the absolute right and discretion, at any time, but at their sole expense, in good faith to conduct, or have conducted by an independent auditor, audits to verify Monetary Award and Derivative Claimant Award claims submitted by Settlement Class Members.

(b) In addition, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Claims Administrator will establish and implement procedures to detect and prevent fraudulent submissions to, and payments of fraudulent claims from, the Monetary Award Fund. Among other fraud detection and prevention procedures, the Claims Administrator, with the approval of Co-Lead Class Counsel and Counsel for the NFL Parties, will institute the following procedures relating to claim audits:

(i) A Settlement Class Member whose claim has been selected for audit by the Claims Administrator, Co-Lead Class Counsel or Counsel for the NFL Parties may be required to submit additional records, including medical records, and information as requested by the auditing party; and

(ii) A Settlement Class Member who refuses to cooperate with an audit, including by unreasonably failing or refusing to provide the auditing party with all records and information sought within the time frame specified, will have the claim denied by the Claims Administrator, without right to an appeal.

(c) On a monthly basis, the Claims Administrator will audit ten percent (10%) of the total Claim Packages and Derivative Claim Packages that the Claims Administrator has found to qualify for Monetary Awards or Derivative Claimant Awards during the preceding month. The Claims Administrator will select such Claim Packages and Derivative Claim Packages for auditing on a random basis or to address a specific concern raised by a Claim Package or Derivative Claim Package, but will audit at least one Claim Package, if any qualify, each month.

(d) In addition, the Claims Administrator will audit Claim Packages that: (i) seek a Monetary Award for a given Qualifying Diagnosis when the Retired NFL Football Player took part in the BAP within the prior 365 days and was not diagnosed with that Qualifying Diagnosis during the BAP baseline assessment examination; (ii) seek a Monetary Award for a given Qualifying Diagnosis when the Retired NFL Football Player submitted a different Claim Package within the prior 365 days based upon a diagnosis of that same Qualifying Diagnosis by a different physician, and that Claim Package was found not to qualify for a Monetary Award; and (iii) reflect a Qualifying Diagnosis made through a medical examination conducted at a location other than a standard treatment or diagnosis setting (*e.g.*, hotel rooms).

(e) Upon selection of a Settlement Class Member's Claim Package for audit, the Claims Administrator will notify Co-Lead Class Counsel, the Settlement Class Member (and his/her individual counsel, if applicable), and Counsel for the NFL Parties of the selection and will require that, within ninety (90) days, or such other time as is necessary and reasonable under the circumstances, the audited Settlement Class Member submit to the Claims Administrator, to the extent not already provided, such information as may be necessary and appropriate to audit the Claim Package, which may include the following records and information:

(i) All of the Retired NFL Football Player's medical records in the Settlement Class Member's possession, custody, or control that relate to the underlying medical condition that is the basis for the Qualifying Diagnosis claimed by the Settlement Class Member;

(ii) A list of all health care providers seen by the Retired NFL Football Player in the last five (5) years;

(iii) The Settlement Class Member's (or subject Retired NFL Football Player's) employment records from Member Clubs or other NFL Football employers, but only to the extent that the Settlement Class Member is authorized under applicable state law or Collective Bargaining Agreement to request and receive such records from the Member Club or other NFL Football employer;

(iv) Such other relevant documents or information within the Settlement Class Member's possession, custody, or control as may reasonably be requested by the Claims Administrator under the circumstances, including, if necessary, authorizations to obtain the medical records of the Settlement Class Member (or subject Retired NFL Football Player) created or obtained by any health care providers seen by the Settlement Class Member (or subject Retired NFL Football Player) in the last five (5) years; and

(v) Where the audit is conducted because of the circumstances set forth in Section 10.3(d), authorizations to obtain the medical records of the Settlement Class Member (or subject Retired NFL Football Player) held by the primary care physician of the Retired NFL Football Player and the medical records of all other physicians or neuropsychologists who have examined the Retired NFL Football Player relating to the Qualifying Diagnosis.

(f) Upon selection of a Settlement Class Member's Derivative Claim Package for audit, the Claims Administrator will notify Co-Lead Class Counsel, the Settlement Class Member (and his/her individual counsel, if applicable), and Counsel for the NFL Parties of the selection and will require that, within ninety (90) days, or such other time as is necessary and reasonable under the circumstances, the audited Settlement Class Member submit to the Claims Administrator, to the extent not already provided, such information as may be necessary and appropriate to audit the Claim Package, which may include relevant documents or information within the Settlement Class Member's possession, custody,

or control as may reasonably be requested by the Claims Administrator under the circumstances.

(g) When auditing a Settlement Class Member's claim for a Monetary Award or Derivative Claimant Award, the Claims Administrator will review the records and information relating to that claim and determine whether the Claim Form or Derivative Claim Form misrepresents, omits, and/or conceals material facts that affect the claim.

(h) If, upon completion of an audit, the Claims Administrator determines that there has not been a misrepresentation, omission, or concealment of a material fact made in connection with the claim, the process of issuing a Monetary Award or Derivative Claimant Award, subject to appeal, will proceed.

(i) If, upon completion of an audit, the Claims Administrator determines that there has been a misrepresentation, omission, or concealment of a material fact made in connection with the claim, the Claims Administrator will notify the Settlement Class Member and will refer the claim to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) for review and findings. The Special Master's review and findings shall take into account whether the misrepresentation, omission or concealment was intentional, and may include the following relief, without limitation: (a) denial of the claim in the event of fraud; (b) additional audits of claims from the same law firm or physician (if applicable), including those already paid; (c) referral of the attorney or physician (if applicable) to the appropriate disciplinary boards; (d) referral to federal authorities; (e) disqualification of the attorney, physician and/or Settlement Class Member from further participation in the Class Action Settlement; and/or (f) if a law firm is found by the Claims Administrator to have submitted more than one fraudulent submission on behalf of Settlement Class Members, claim submissions by that law firm will no longer be accepted, and attorneys' fees paid to the firm by the Settlement Class Member will be forfeited and paid to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

(j) In addition, if the Claims Administrator at any time makes a finding (based on its own detection processes or from information received from Co-Lead Class Counsel or Counsel for the NFL Parties) of fraud by a Settlement Class Member submitting a claim for a Monetary Award or Derivative Claimant Award, and/or by the physician providing the Qualifying Diagnosis, including, without limitation, misrepresentations, omissions, or concealment of material facts relating to the claim, the Claims Administrator will notify the Settlement Class Member and will make a recommendation to Co-Lead Class Counsel and Counsel for the NFL Parties to refer the claim to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) for review and findings that may include, without limitation, those set forth in Section 10.3(i).

(i) If both Co-Lead Class Counsel and Counsel for the NFL Parties do not agree with the Claims Administrator's recommendation to refer

a claim to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), they will notify the Claims Administrator, who will continue with the processing of the claim.

Section 10.4 The Claims Administrator, in consultation with Co-Lead Class Counsel and Counsel for the NFL Parties, will also establish system-wide processes to detect and prevent fraud, including, without limitation, claims processing quality training and review and data analytics to spot “red flags” of fraud, including, without limitation, alteration of documents, questionable signatures, duplicative documents submitted on claims, the number of claims from similar addresses or supported by the same physician or office of physicians, data metrics indicating patterns of fraudulent submissions, and such other attributes of claim submissions that create a reasonable suspicion of fraud.

ARTICLE XI

Identification and Satisfaction of Liens

Section 11.1 Lien Resolution Administrator

(a) Appointment and Oversight

(i) The Motion for Preliminary Approval of the Class Action Settlement filed by Class Counsel, will request that the Court appoint Garretson Group as Lien Resolution Administrator. Within ten (10) days after the Effective Date, Co-Lead Class Counsel will retain the Lien Resolution Administrator appointed by the Court.

(ii) Co-Lead Class Counsel’s retention agreement with the Lien Resolution Administrator will provide that the Lien Resolution Administrator will perform its responsibilities and take all steps necessary to faithfully implement and administer the Lien-related provisions of the Settlement Agreement, and will require that the Lien Resolution Administrator maintain at all times appropriate and sufficient bonding insurance in connection with its performance of its responsibilities under the Settlement Agreement.

(iii) The Court may, at its sole discretion, request reports or information from the Lien Resolution Administrator. The Lien Resolution Administrator will be responsible for reporting and providing information to the Court at such frequency and in such a manner as the Court directs.

(iv) The Special Master, for the duration of his or her term, will oversee the Lien Resolution Administrator, and may, at his or her sole discretion, request reports or information from the Lien Resolution Administrator.

(b) Roles and Responsibilities. The Lien Resolution Administrator will, among other responsibilities set forth in this Settlement Agreement, administer the process for the identification and satisfaction of all applicable Liens, as set forth in Section 11.3. Each Settlement Class Member (and his or her respective

counsel, if applicable) claiming a Monetary Award or Derivative Claimant Award, however, will be solely responsible for the satisfaction and discharge of all Liens.

(c) Compensation and Expenses. Reasonable compensation of the Lien Resolution Administrator, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and reasonable out-of-pocket costs and expenses directly incurred as a result of the Lien Resolution Administrator's responsibilities will be paid out of the Monetary Award Fund, unless otherwise specified herein. The Lien Resolution Administrator shall submit an annual budget to the Court for review and approval. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the reasonableness of the Lien Resolution Administrator's out-of-pocket costs and expenses, in which case the Court will determine (or may, in its discretion, refer the challenge to the Special Master to determine) the reasonableness of such costs and expenses. If the Court or Special Master, as applicable, determines that any costs and expenses are unreasonable, the Lien Resolution Administrator will not be paid for such costs and expenses or, if such costs and expenses have already been paid, the Lien Resolution Administrator will refund that amount to the Monetary Award Fund.

(d) Liability. The Parties, Class Counsel, Counsel for the NFL Parties, and the Special Master, and their respective Affiliates, will not be liable for any act, or failure to act, of the Lien Resolution Administrator.

(e) Replacement. The Lien Resolution Administrator may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, or for cause by motion of either Co-Lead Class Counsel or Counsel for the NFL Parties, upon order of the Court. If the Lien Resolution Administrator resigns, dies, is replaced, or is otherwise unable to continue employment in this position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed Lien Resolution Administrator for appointment by the Court.

Section 11.2 Conflicts of Interest. Within ninety (90) days after the Effective Date, Co-Lead Class Counsel, Counsel for the NFL Parties, the Special Master and the Lien Resolution Administrator will establish and implement procedures to promptly detect and resolve possible conflicts of interest between the Lien Resolution Administrator, including, without limitation, its executive leadership team and all employees working on the Class Action Settlement, on the one hand, and Settlement Class Members (and counsel individually representing them, if any), the NFL Parties, Counsel for the NFL Parties, or the Special Master, on the other hand. Co-Lead Class Counsel, Counsel for the NFL Parties, and the Lien Resolution Administrator, subject to approval of the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), may modify such procedures in the future, if appropriate. Notwithstanding anything herein to the contrary, Co-Lead Class Counsel, Counsel for the NFL Parties, and the Special Master understand that the Lien Resolution Administrator regularly provides lien resolution and other related services to settling parties and their attorneys, and the Special Master, Co-Lead Class Counsel, and Counsel for the NFL Parties acknowledge and agree that

it shall not be a conflict of interest for the Lien Resolution Administrator to provide such services to such individuals or to receive compensation for such work.

Section 11.3 Lien Identification, Satisfaction and Discharge

(a) Each Settlement Class Member claiming a Monetary Award or Derivative Claimant Award will identify all Liens held or asserted by Governmental Payors or Medicare Part C or Part D Program sponsors with respect to any Monetary Award or Derivative Claimant Award in his or her Claim Form or Derivative Claim Form.

(b) Each Settlement Class Member (and counsel individually representing him or her, if any) shall cooperate with the Lien Resolution Administrator to identify all Liens held or asserted by Governmental Payors or Medicare Part C or Part D Program sponsors with respect to any Monetary Award or Derivative Claimant Award as a prerequisite to receiving payment of any Monetary Award or Derivative Claimant Award, including by providing the requested information and authorizations to the Lien Resolution Administrator and/or Claims Administrator in the timeframe specified for so doing.

(c) Among other things, each Settlement Class Member will authorize the Lien Resolution Administrator to:

(i) Establish procedures and protocols to identify and resolve Liens held or asserted by Governmental Payors or Medicare Part C or Part D Program sponsors with respect to any Monetary Award or Derivative Claimant Award;

(ii) Undertake to obtain an agreement in writing and other supporting documentation with CMS promptly following the Effective Date that:

(1) Establishes a global repayment amount per Qualifying Diagnosis and/or for all or certain Qualifying Diagnoses for Settlement Class Members who are or were beneficiaries of the Medicare Program, or, alternatively, otherwise sets forth a conditional payment resolution process. Such amounts will be based on the routine costs associated with the medically accepted standard of care for the treatment and management of each Qualifying Diagnosis, as well as actual utilization of treatment by Settlement Class Members related to each Qualifying Diagnosis. The agreement, in writing, and supporting documentation with CMS will demonstrate reasonable proof of satisfaction of Medicare's Part A and/or Part B fee-for-service recovery claim in connection with Settlement Class Member's (who are or were beneficiaries of the Medicare Program) receipt of any Monetary Award or Derivative Claimant Award and any benefits provided pursuant to this Settlement Agreement.

(2) Establishes reporting processes recognized by CMS as satisfying the reporting obligations, if any, under the mandatory Medicare reporting requirements of Section 111 of the Medicare, Medicaid and SCHIP Extension

Act of 2007, 110 Pub. L. No. 173, 121 Stat. 2492 (“MMSEA”) in connection with this Settlement Agreement;

(iii) Fulfill all state and federal reporting obligations, including those to CMS that are agreed upon with CMS;

(iv) Satisfy Lien amounts owed to a Governmental Payor or, to the extent identified by the Class Member pursuant to Section 11.3(a), Medicare Part C or Part D Program sponsor for medical items, services, and/or prescription drugs paid on behalf of Settlement Class Members out of any Monetary Award or Derivative Claimant Award to the Settlement Class Member pursuant to this Settlement Agreement; and

(v) Transmit all information received from any Governmental Payor or Medicare Part C or Part D Program sponsor pursuant to such authorizations (i) to the NFL Parties, Claims Administrator, and/or Special Master solely for purposes of verifying compliance with the MSP Laws or other similar reporting obligations and for verifying satisfaction and full discharge of all such Liens, or (ii) as otherwise directed by the Court.

(d) If the Lien Resolution Administrator is able to negotiate a global repayment amount for some or all of the Qualifying Diagnoses for Settlement Class Members who are or were beneficiaries of the Medicare Program with CMS, as set forth in Section 11.3(c)(ii)(1), the Lien Resolution Administrator shall: (i) satisfy such global repayment amount out of any Monetary Award to such Settlement Class Member; and (ii) provide that reasonable compensation of the Lien Resolution Administrator for such efforts, will be paid out of any Monetary Award to such Settlement Class Member.

(e) If the Lien Resolution Administrator is unable to negotiate a global repayment amount for some or all of the Qualifying Diagnoses for Settlement Class Members who are or were beneficiaries of the Medicare Program with CMS, as set forth in Section 11.3(c)(ii)(1), the Lien Resolution Administrator will put in place a mechanism for resolving these Liens on an individual basis, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties. In addition, the Lien Resolution Administrator will put in place a mechanism for resolving Liens owed to other Governmental Payors or Medicare Part C or Part D Program sponsors on an individual basis, as agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties. These mechanisms for resolving such Liens on an individual basis will allow the Lien Resolution Administrator to: (i) satisfy such Lien amounts owed for medical items, services, and/or prescription drugs paid on behalf of a Settlement Class Member out of any Monetary Award to the Settlement Class Member, subject to the Settlement Class Member’s right to object to the fact and/or amount of such Lien amount; and (ii) provide that the Lien Resolution Administrator’s reasonable costs and expenses incurred in resolving such Liens, including the reasonable compensation of the Lien

Resolution Administrator for such efforts, will be paid out of any Monetary Award to the Settlement Class Member.

(f) The Parties further understand and agree that the Lien Resolution Administrator's performance of functions described in this Article is not intended to modify the legal and financial rights and obligations of Settlement Class Members, including the duty to pay and/or arrange for reimbursement of each Settlement Class Member's past, current, or future bills or costs, if any, for medical items, services, and/or prescription drugs, and to satisfy and discharge any and all statutory recovery obligations for any Liens.

(g) Notwithstanding any other provision of this Settlement Agreement relating to timely payment, the Claims Administrator will not pay any Monetary Award to a Settlement Class Member who is or was entitled to benefits under a Governmental Payor program or Medicare Part C or Part D Program prior to: (i) the Lien Resolution Administrator's determination of the final amount needed to satisfy the reimbursement obligation that any Governmental Payor or Medicare Part C or Part D Program sponsor states is due and owing (as reflected in a final demand letter or other formal written communication), and satisfaction and discharge of that reimbursement obligation as evidenced by the Lien Resolution Administrator's receipt of a written satisfaction and discharge from the applicable Governmental Payor or Medicare Part C or Part D Program sponsor; or (ii) the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Monetary Award or Derivative Claimant Award under which such reimbursement obligation will be resolved.

(h) Notwithstanding any other provision of this Settlement Agreement relating to timely payment, if any person or entity claims any Liens, other than those set forth in Section 11.3(g), with respect to a Settlement Class Member's Monetary Award or Derivative Claimant Award, then the Claims Administrator will not pay any such Monetary Award or Derivative Claimant Award if the Claims Administrator or Lien Resolution Administrator has received notice of that Lien and there is a legal obligation to withhold payment to the Settlement Class Member under applicable federal or state law. The Claims Administrator will hold such Monetary Award or Derivative Claimant Award in an escrow account until the Settlement Class Member (and counsel individually representing him or her, if any) presents documentary proof, such as a court order or release or notice of satisfaction by the party asserting the Lien, that such Lien has been satisfied and discharged; or until the Lien Resolution Administrator's determination of the "holdback" amount to be deducted from the Monetary Award, Supplemental Monetary Award or Derivative Claimant Award under which such reimbursement obligation will be resolved.

(i) Settlement Class Members who are or were entitled to benefits under Medicare Part C or Part D Programs may be required by statute or otherwise, when making a claim for and/or receiving compensation pursuant to this Settlement Agreement, to notify the relevant Medicare Part C or Part D Program sponsor or others of the existence of, and that Settlement Class Member's participation

in, this Class Action Settlement. It is the sole responsibility of each Settlement Class Member to determine whether he or she has such a notice obligation, and to perform timely any such notice reporting.

Section 11.4 Indemnification. Each Settlement Class Member, on his or her own behalf, and on behalf of his or her estate, predecessors, successors, assigns, representatives, heirs, beneficiaries, executors, and administrators, in return for the benefits and consideration provided in this Settlement Agreement, will indemnify and forever hold harmless, and pay all final judgments, damages, costs, expenses, fines, penalties, interest, multipliers, or liabilities, including the costs of defense and attorneys' fees of, the Released Parties against any and all claims by Other Parties arising from, relating to, or resulting from (a) any undisclosed Lien relating to, or resulting from, compensation or benefits received by a Settlement Class Member pursuant to this Class Action Settlement and/or (b) the failure of a Settlement Class Member timely and accurately to report or provide information that is necessary for compliance with the MSP Laws, or for the Lien Resolution Administrator to identify and/or satisfy all Governmental Payors or Medicare Part C or Part D Program sponsors who may hold or assert a reimbursement right. The amount of indemnification will not exceed the total Monetary Award or Derivative Claimant Award for that Settlement Class Member's claim. **CLASS AND SUBCLASS REPRESENTATIVES AND SETTLEMENT CLASS MEMBERS ACKNOWLEDGE THAT THIS SECTION COMPLIES WITH ANY REQUIREMENT TO EXPRESSLY STATE THAT LIABILITY FOR SUCH CLAIMS IS INDEMNIFIED AND THAT THIS SECTION IS CONSPICUOUS AND AFFORDS FAIR AND ADEQUATE NOTICE.**

Section 11.5 No Admission. Any reporting performed by the Lien Resolution Administrator and/or Claims Administrator for the purpose of resolving Liens, if any, related to compensation provided to Settlement Class Members pursuant to this Settlement Agreement does not constitute an admission by any Settlement Class Member or any Released Party of any liability or evidence of liability in any manner.

Section 11.6 The foregoing provisions of this Article are solely for the several benefit of the NFL Parties, the Lien Resolution Administrator, the Special Master, and the Claims Administrator. No Settlement Class Member (or counsel individually representing them, if any) will have any rights or defenses based upon or arising out of any act or omission of the NFL Parties or any Administrator with respect to this Article.

ARTICLE XII

Education Fund

Section 12.1 An Education Fund will be established to fund programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of Retired NFL Football Players regarding the NFL CBA Medical and Disability Benefits programs and other educational initiatives benefitting Retired NFL Football Players. The Court shall

approve these education programs, with input from Co-Lead Class Counsel, Counsel for the NFL Parties and medical experts, as further set forth below. Co-Lead Class Counsel and Counsel for the NFL Parties will agree to a protocol through which Retired NFL Football Players will actively participate in such initiatives.

Section 12.2 Co-Lead Class Counsel, with input from Counsel for the NFL Parties, and with Court approval, will take all necessary steps to establish the Education Fund and establish procedures and controls to manage and account for the disbursement of funds to the education projects and all other costs associated with the Education Fund. The costs and expenses to administer the Education Fund will be paid out of the Education Fund Amount.

ARTICLE XIII

Preliminary Approval and Class Certification

Section 13.1 Promptly after execution, Class Counsel will file the Motion for Preliminary Approval of the Class Action Settlement and the Settlement Agreement as an exhibit thereto. Simultaneously, the Class and Subclass Representatives will file a Motion for Certification of Rule 23(b)(3) Class and Subclasses for Purposes of Settlement.

Section 13.2 The Parties agree to take all actions reasonably necessary to obtain the Preliminary Approval and Class Certification Order from the Court.

Section 13.3 The Parties agree to jointly request that the Court stay this action and all Related Lawsuits, and enjoin all Settlement Class Members, unless and until they have been excluded from the Settlement Class by action of the Court, or until the Court denies approval of the Class Action Settlement, or until the Settlement Agreement is otherwise terminated, from filing, commencing, prosecuting, intervening in, participating in and/or maintaining, as plaintiffs, claimants, or class members in, any other lawsuit, including, without limitation, a Related Lawsuit, or administrative, regulatory, arbitration, or other proceeding in any jurisdiction (whether state, federal or otherwise), against Released Parties based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances at issue, in the Class Action Complaint, Related Lawsuits and/or the Released Claims, except that claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits will not be stayed or enjoined. For the avoidance of any doubt, the Parties are not requesting that the Court stay any actions against Riddell.

(a) The Parties recognize that there may be further pleadings, discovery responses, documents, testimony, or other matters or materials owed by the Parties to each other pursuant to existing pleading requirements, discovery requests, pretrial rules, procedures, orders, decisions, or otherwise. As of the Settlement Date, each Party expressly waives any right to receive, inspect, or hear such pleadings, discovery, testimony, or other matters or materials during the pendency of the

settlement proceedings contemplated by this Settlement Agreement and subject to further order of the Court.

Section 13.4 The Parties agree that any certification of the Settlement Class and Subclasses will be for settlement purposes only. The Parties do not waive or concede any position or arguments they have for or against certification of any class for any other purpose in any action or proceeding. Any class certification order entered in connection with this Settlement Agreement will not constitute an admission by the NFL Parties, or finding or evidence, that the Class and Subclass Representatives' claims, or the claims of any other Settlement Class Member, or the claims of the Settlement Class, are appropriate for class treatment if the claims were contested in this or any other federal, state, arbitral, or foreign forum. If the Court enters the proposed form of Preliminary Approval and Class Certification Order, the Final Order and Judgment will provide for vacation of the Final Order and Judgment and the Preliminary Approval and Class Certification Order in the event that this Settlement Agreement does not become effective.

Section 13.5 Upon entry of the Preliminary Approval and Class Certification Order, the statutes of limitation applicable to any and all claims or causes of action that have been or could be asserted by or on behalf of any Settlement Class Members related to the subject matter of the Settlement Agreement will be tolled and stayed to the extent not already tolled by the initiation of an action in this litigation or a Related Lawsuit. The limitations period will not begin to run again for any Settlement Class Member unless and until he or she is deemed to have Opted Out of the Settlement Class, this Settlement Agreement is terminated pursuant to ARTICLE XVI, or a Settlement Class Member's Release and Covenant Not to Sue has been rendered null and void by the Court as set forth in Section 25.6(g). In the event the Settlement Agreement is terminated pursuant to ARTICLE XVI, to the extent not otherwise tolled, the limitations period for each Settlement Class Member as to whom the limitations period had not expired as of the date of the Preliminary Approval and Class Certification Order will extend for the longer of thirty (30) days from the last required issuance of notice of termination or the period otherwise remaining before expiration. Notwithstanding the tolling agreement herein, the Parties recognize that any time already elapsed for any Class or Subclass Representatives or Settlement Class Members on any applicable statutes of limitations will not be reset, and no expired claims will be revived, by virtue of this tolling agreement. Class and Subclass Representatives and Settlement Class Members do not admit, by entering into this Settlement Agreement, that they have waived any applicable tolling protections available as a matter of law or equity. Nothing in this Settlement Agreement will constitute an admission in any manner that the statute of limitations has been tolled for anyone outside the Settlement Class, nor does it constitute a waiver of legal positions regarding tolling.

ARTICLE XIV

Notice, Opt Out, and Objections

Section 14.1 Notice

(a) As part of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Plaintiffs will submit to the Court a Settlement Class Notice Plan agreed upon by Class Counsel and Counsel for the NFL Parties.

(b) The Settlement Class Notice Plan, to be implemented by the Settlement Class Notice Agent following the Court's entry of the Preliminary Approval and Class Certification Order, and approval of the Settlement Class Notice (in the form of Exhibit 5), paid for by the NFL Parties' transfer of Four Million United States dollars (U.S. \$4,000,000) to Co-Lead Class Counsel, as set forth in Sections 23.1 and 23.3, will be designed to meet the requirements of Fed. R. Civ. P. 23(c)(2)(B), and will include: (i) direct notice by first-class mail; (ii) broad notice through the use of paid media including national radio spots, national consumer magazines, television and internet advertising; and (iii) electronic notice through the Settlement Website created under Section 4.1(a) and an automated telephone system created under Section 4.1(b).

(c) The Parties and the Claims Administrator will maintain a list of the names and addresses of each person to whom the Settlement Class Notice is transmitted in accordance with any order entered by the Court pursuant to ARTICLE XIII. These names and addresses will be kept strictly confidential and will be used only for purposes of administering this Class Action Settlement, except as otherwise ordered by the Court.

(d) Within thirty (30) days of the Effective Date, upon Court approval, Co-Lead Class Counsel shall cause the Settlement Class Supplemental Notice to be disseminated to Settlement Class Members by first-class mail and by posting on the Settlement Website created under Section 4.1(a) and through an automated telephone system created under Section 4.1(b), to advise Settlement Class Members of the previously disclosed deadlines: (i) to register for participation in the Class Action Settlement, as set forth in Section 4.2; (ii) as to eligible Retired NFL Football Players, to participate in the BAP, as set forth in Section 5.3; and (iii) to submit Claim Packages or Derivative Claim Packages, as set forth in Section 8.3. The Settlement Class Supplemental Notice shall include the above information, and any other information, as agreed upon by Co-Lead Class Counsel and Counsel for the NFL Parties, and approved by the Court.

Section 14.2 Opt Outs

(a) The Settlement Class Notice will provide instructions regarding the procedures that must be followed to Opt Out of the Settlement Class pursuant to Fed. R. Civ. P. 23(c)(2)(B)(v). The Parties agree that, to Opt Out validly from the Settlement Class, a Settlement Class Member must submit a written request

to Opt Out stating “I wish to exclude myself from the Settlement Class in *In re: National Football League Players’ Concussion Injury Litigation*, No. 2:12-md-02323” (or substantially similar clear and unambiguous language) to the Claims Administrator on or before such date as is ordered by the Court. That written request also will contain the Settlement Class Member’s printed name, address, telephone number, and date of birth and enclose a copy of his or her driver’s license or other government issued identification. A written request to Opt Out may not be signed using any form of electronic signature, but must contain the dated Personal Signature of the Retired NFL Football Player, Representative Claimant, or Derivative Claimant seeking to exclude himself or herself from the Settlement Class. Attorneys for Settlement Class Members may submit a written request to Opt Out on behalf of a Settlement Class Member, but such request must contain the Personal Signature of the Settlement Class Member. The Claims Administrator will provide copies of all requests to Opt Out to Class Counsel and Counsel for the NFL Parties within seven (7) days of receipt of each such request. Valid requests to Opt Out from the Settlement Class will become effective on the Final Approval Date.

(b) All Settlement Class Members who do not timely and properly Opt Out from the Settlement Class will in all respects be bound by all terms of this Settlement Agreement and the Final Order and Judgment upon the Effective Date, will be entitled to all procedural opportunities and protections described in this Settlement Agreement and provided by the Court, and to all compensation and benefits for which they qualify under its terms, and will be barred permanently and forever from commencing, filing, initiating, prosecuting, asserting, and/or maintaining any and all Released Claims against any Released Parties in any court of law or equity, arbitration tribunal, or administrative or other forum.

(c) Prior to the Final Approval Date, any Retired NFL Football Player, Representative Claimant, or Derivative Claimant may seek to revoke his or her Opt Out from the Settlement Class and thereby receive the benefits of this Class Action Settlement by submitting a written request to Co-Lead Class Counsel and Counsel for the NFL Parties stating “I wish to revoke my request to be excluded from the Settlement Class” (or substantially similar clear and unambiguous language), and also containing the Settlement Class Member’s printed name, address, phone number, and date of birth. The written request to revoke an Opt Out must contain the Personal Signature of the Settlement Class Member seeking to revoke his or her Opt Out.

Section 14.3 Objections

(a) Provided a Settlement Class Member has not submitted a written request to Opt Out, as set forth in Section 14.2(a), the Settlement Class Member may present written objections, if any, explaining why he or she believes the Class Action Settlement should not be approved by the Court as fair, reasonable, and adequate. No later than such date as is ordered by the Court, a Settlement Class Member who wishes to object to any aspect of the Class Action Settlement must file with the Court , or as the Court otherwise may direct, a written statement of the objection(s). The written statement of objection(s) must include a detailed statement of

the Settlement Class Member's objection(s), as well as the specific reasons, if any, for each such objection, including any evidence and legal authority the Settlement Class Member wishes to bring to the Court's attention. That written statement also will contain the Settlement Class Member's printed name, address, telephone number, and date of birth, written evidence establishing that the objector is a Settlement Class Member, and any other supporting papers, materials, or briefs the Settlement Class Member wishes the Court to consider when reviewing the objection. A written objection may not be signed using any form of electronic signature, but must contain the dated Personal Signature of the Retired NFL Football Player, Representative Claimant, or Derivative Claimant making the objection. The Court shall determine whether any Settlement Class Members who do not follow the procedures will have waived any objections they may have.

(b) A Settlement Class Member may object on his or her own behalf or through an attorney hired at that Settlement Class Member's own expense, provided the Settlement Class Member has not submitted a written request to Opt Out, as set forth in Section 14.2(a). Attorneys asserting objections on behalf of Settlement Class Members must: (i) file a notice of appearance with the Court by the date set forth in the Preliminary Approval and Class Certification Order, or as the Court otherwise may direct; (ii) file a sworn declaration attesting to his or her representation of each Settlement Class Member on whose behalf the objection is being filed or a copy of the contract (to be filed *in camera*) between that attorney and each such Settlement Class Member; and (iii) comply with the procedures described in this Section.

(c) A Settlement Class Member (or counsel individually representing him or her, if any) seeking to make an appearance at the Fairness Hearing must file with the Court, by the date set forth in the Preliminary Approval and Class Certification Order, or as the Court otherwise may direct, a written notice of his or her intention to appear at the Fairness Hearing, in accordance with the requirements set forth in the Preliminary Approval and Class Certification Order.

(d) Any Settlement Class Member who fails to comply with the provisions of this Section 14.3 will waive and forfeit any and all rights he or she may have to object to the Class Action Settlement.

ARTICLE XV

Communications to the Public

Section 15.1 The form, content, and timing of any public statement announcing the filing of this Settlement Agreement will be subject to mutual agreement by Class Counsel and Counsel for the NFL Parties. The Parties and their counsel agree not to make any public statements, including statements to the media, that are inconsistent with the Settlement Agreement. Any communications to the public or the media made by or on behalf of the Parties and their respective counsel regarding the Class Action Settlement will be made in good faith and will be consistent with the Parties' agreement to take all actions reasonably necessary for preliminary and final

approval of this Class Action Settlement. Any information contained in such communications will be balanced, fair, accurate, and consistent with the content of the Settlement Class Notice.

(a) Nothing herein is intended or will be interpreted to inhibit or interfere with the ability of Class Counsel or Counsel for the NFL Parties to communicate with the Court, their clients, or Settlement Class Members and/or their counsel.

(b) Class Counsel acknowledge and agree, and the Preliminary Approval and Class Certification Order will provide, that the NFL Parties have the right to communicate orally and in writing with, and to respond to inquiries from, Settlement Class Members on matters unrelated to the Class Action Settlement in connection with the NFL Parties' normal business.

ARTICLE XVI

Termination

Section 16.1 Walk-Away Right of NFL Parties. Without limiting any other rights under this Settlement Agreement, the NFL Parties will have the absolute and unconditional right, in their sole good faith discretion, to unilaterally terminate and render null and void this Class Action Settlement and Settlement Agreement for any reason whatsoever following notice of Opt Outs and prior to the Fairness Hearing. The NFL Parties must provide written election to terminate this Settlement Agreement to Class Counsel and the Court prior to the Fairness Hearing.

Section 16.2 Party Termination Rights

(a) Class Counsel and Counsel for the NFL Parties each have the absolute and unconditional right, in their sole discretion, which discretion will be exercised in good faith, to terminate and render null and void this Class Action Settlement and Settlement Agreement if (i) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of this Settlement Agreement that Class Counsel or Counsel for the NFL Parties reasonably and in good faith determines is material, including, without limitation, the Releases or the definition of the Settlement Class, or (ii) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the proposed Preliminary Approval and Class Certification Order or the proposed Final Order and Judgment (Exhibit 4) that Class Counsel or Counsel for the NFL Parties reasonably and in good faith believes is material. Such written election to terminate this Settlement Agreement must be made to the Court within thirty (30) days of such Court order.

(b) Class Counsel may not terminate and render null and void this Class Action Settlement and Settlement Agreement on the basis of the attorneys' fees award ordered, or modified, by the Court or any appellate court(s), as set forth in ARTICLE XXI.

Section 16.3 Post-Termination Actions

(a) In the event this Settlement Agreement is terminated or becomes null and void, this Settlement Agreement will not be offered into evidence or used in this or in any other action in the Court, or in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum for any purpose, including, but not limited to, the existence, certification, or maintenance of any purported class. In addition, in such event, this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection with this Settlement Agreement will be without prejudice to all Parties and will not be admissible into evidence and will not be deemed or construed to be an admission or concession by any of the Parties of any fact, matter, or proposition of law and will not be used in any manner for any purpose, and all Parties will stand in the same position as if this Settlement Agreement had not been negotiated, made, or filed with the Court.

(b) In the event this Settlement Agreement is terminated or becomes null and void, the Parties will jointly move the Court to vacate the Preliminary Approval and Certification Order and any other orders certifying a Settlement Class provided.

(c) If this Settlement Agreement is terminated or becomes null and void after notice has been given, the Parties will provide Court-approved notice of termination to the Settlement Class. If a Party terminates the Settlement Agreement in accordance with Section 16.1 or Section 16.2, that Party will pay the cost of notice of termination.

(d) In the event this Settlement Agreement is terminated or becomes null and void, any unspent and uncommitted monies in the Funds will revert to the NFL Parties within ten (10) days, and all data provided by the NFL Parties, Class Counsel and/or Settlement Class Members shall be returned or destroyed.

ARTICLE XVII

Treatment of Confidential Information

Section 17.1 Confidentiality of Information Relating to the Settlement Agreement. The Parties will treat all confidential or proprietary information shared hereunder, or in connection herewith, either prior to, on or after the Settlement Date, and any and all prior or subsequent drafts, representations, negotiations, conversations, correspondence, understandings, analyses, proposals, term sheets, and letters, whether oral or written, of any kind or nature, with respect to the subject matter hereof (“Confidential Information”) in conformity with strict confidence and will not disclose Confidential Information to any non-Party without the prior written consent of the Party that shared the Confidential Information, except: (i) as required by applicable law, regulation, or by order or request of a court of competent jurisdiction, regulator, or self-regulatory organization (including subpoena or document request), provided that the Party that shared the Confidential Information is given prompt written notice thereof and, to the extent practicable, an opportunity to seek a protective order or other

confidential treatment thereof, provided further that the Party subject to such requirement or request cooperates fully with the Party that shared the Confidential Information in connection therewith, and only such Confidential Information is disclosed as is legally required to be disclosed in the opinion of legal counsel for the disclosing Party; (ii) under legal (including contractual) or ethical obligations of confidentiality, on an as-needed and confidential basis to such Party's present and future accountants, counsel, insurers, or reinsurers; or (iii) with regard to any information that is already publicly known through no fault of such Party or its Affiliates. This Settlement Agreement, all exhibits hereto, any other documents filed in connection with the Class Action Settlement, and any information disclosed through a public court proceeding shall not be deemed Confidential Information.

Section 17.2 Confidentiality of Retired NFL Football Player Information

(a) All information relating to a Retired NFL Football Player that is disclosed to or obtained by the Special Master, BAP Administrator, Claims Administrator, Lien Resolution Administrator, designated Qualified BAP Providers, the NFL Parties, an Appeals Advisory Panel member, an Appeals Advisory Panel Consultant, or the Court, may be used only by the Special Master, BAP Administrator, Claims Administrator, Lien Resolution Administrator, designated Qualified BAP Providers, the NFL Parties, an Appeals Advisory Panel member, an Appeals Advisory Panel Consultant, or the Court for the administration of this Class Action Settlement according to the Settlement Agreement terms and conditions. All such information relating to a Retired NFL Football Player will be treated as Confidential Information hereunder, will be subject to the terms of Section 17.1 hereof, and, where applicable, will be treated as Protected Health Information subject to HIPAA and other applicable privacy laws.

ARTICLE XVIII Releases and Covenant Not to Sue

Section 18.1 Releases

(a) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Settlement Class, the Class and Subclass Representatives, and each Settlement Class Member, on his or her own behalf and on behalf of his or her respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, heirs, next of kin, estates, beneficiaries, executors, administrators, and any natural, legal, or juridical person or entity to the extent he, she, or it is entitled to assert any claim on behalf of any Settlement Class Member (the "Releasers"), hereby waive and release, forever discharge and hold harmless the Released Parties, and each of them, of and from any and all past, present and future claims, counterclaims, actions, rights or causes of action, liabilities, suits, demands, damages, losses, payments, judgments, debts, dues, sums of money, costs and expenses (including, without limitation, attorneys' fees and

costs), accounts, reckonings, bills, covenants, contracts, controversies, agreements, obligations, or promises, in law or in equity, contingent or non-contingent, known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, in any forum that the Releasors, and each of them, had, has, or may have in the future arising out of, in any way relating to or in connection with the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, referred to or relating to the Class Action Complaint and/or Related Lawsuits (“Claims”), including, without limitation, Claims:

(i) that were, are or could have been asserted in the Class Action Complaint or any other Related Lawsuit; and/or

(ii) arising out of, or relating to, head, brain and/or cognitive injury, as well as any injuries arising out of, or relating to, concussions and/or subconcussive events (including, without limitation, prevention, diagnosis and treatment thereof) of whatever cause and its damages (whether short-term, long-term or death), whenever arising, including, without limitation, Claims for personal or bodily injury, including disease, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life (and exacerbation and/or progression of personal or bodily injury), or wrongful death and/or survival actions as a result of such injury and/or exacerbation and/or progression thereof; and/or

(iii) arising out of, or relating to, neurocognitive deficits or impairment, or cognitive disorders, of whatever kind or degree, including, without limitation, mild cognitive impairment, moderate cognitive impairment, dementia, Alzheimer’s Disease, Parkinson’s Disease, and ALS; and/or

(iv) arising out of, or relating to, CTE; and/or

(v) arising out of, or relating to, loss of support, services, consortium, companionship, society, or affection, or damage to familial relations (including disease, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life); and/or

(vi) arising out of, or relating to, increased risk, possibility, or fear of suffering in the future from any head, brain and/or cognitive injury, as well as any injuries arising out of, or relating to, concussions and/or subconcussive events (including, without limitation, prevention, diagnosis and treatment thereof), and including disease, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life); and/or

(vii) arising out of, or relating to, medical screening and medical monitoring for undeveloped, unmanifested, and/or undiagnosed head, brain and/or cognitive injury, as well as any injuries arising out of, or relating to, concussions and/or subconcussive events (including, without limitation, prevention, diagnosis and treatment thereof); and/or

(viii) premised on any purported or alleged breach of any Collective Bargaining Agreement related to the issues in the Class Action Complaint and/or Related Lawsuits, except claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits.

(b) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Releasors do hereby release, forever discharge and hold harmless the Released Parties from any and all Claims, including unknown Claims, arising from, relating to, or resulting from the reporting, transmittal of information, or communications between or among the NFL Parties, Counsel for the NFL Parties, the Special Master, Claims Administrator, Lien Resolution Administrator, any Governmental Payor, and/or Medicare Part C or Part D Program sponsor regarding any claim for benefits under this Settlement Agreement, including any consequences in the event that this Settlement Agreement impacts, limits, or precludes any Settlement Class Member's right to benefits under Social Security or from any Governmental Payor or Medicare Part C or Part D Program sponsor.

(c) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Releasors do hereby release, forever discharge and hold harmless the Released Parties from any and all Claims, including unknown Claims, pursuant to the MSP Laws, or other similar causes of action, arising from, relating to, or resulting from the failure or alleged failure of any of the Released Parties to provide for a primary payment or appropriate reimbursement to a Governmental Payor or Medicare Part C or Part D Program sponsor with a Lien in connection with claims for medical items, services, and/or prescription drugs provided in connection with compensation or benefits claimed or received by a Settlement Class Member pursuant to this Settlement Agreement.

(d) In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Releasors do hereby release, forever discharge and hold harmless the Released Parties, the Special Master, BAP Administrator, Claims Administrator, and their respective officers, directors, and employees from any and all Claims, including unknown Claims, arising from, relating to, or resulting from their participation, if any, in the BAP, including, but not limited to, Claims for negligence, medical malpractice, wrongful or delayed diagnosis, personal injury, bodily injury (including disease, trauma, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life), or death arising from, relating to, or resulting from such participation.

Section 18.2 Release of Unknown Claims. In connection with the releases in Section 18.1, the Class and Subclass Representatives, all Settlement Class Members, and the Settlement Class acknowledge that they are aware that they may hereafter discover Claims now unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to actions

or matters released herein. Class and Subclass Representatives, all Settlement Class Members, and the Settlement Class explicitly took unknown or unsuspected claims into account in entering into the Settlement Agreement and it is the intention of the Parties fully, finally and forever to settle and release all Claims as provided in Section 18.1 with respect to all such matters.

Section 18.3 Scope of Releases

(a) Each Party acknowledges that it has been informed of Section 1542 of the Civil Code of the State of California (and similar statutes) by its counsel and that it does hereby expressly waive and relinquish all rights and benefits, if any, which it, he or she has or may have under said section (and similar sections) which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

(b) The Parties acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common law of any other state, territory, or other jurisdiction was separately bargained for and that the Parties would not have entered into this Settlement Agreement unless it included a broad release of unknown claims relating to the matters released herein.

(c) The Releasors intend to be legally bound by the Releases.

(d) The Releases are not intended to prevent the NFL Parties from exercising their rights of contribution, subrogation, or indemnity under any law.

(e) Nothing in the Releases will preclude any action to enforce the terms of this Settlement Agreement in the Court.

(f) The Parties represent and warrant that no promise or inducement has been offered or made for the Releases contained in this Article except as set forth in this Settlement Agreement and that the Releases are executed without reliance on any statements or any representations not contained in this Settlement Agreement.

Section 18.4 Covenant Not to Sue. From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, the Class and Subclass Representatives, each Settlement Class Member, and the Settlement Class, on behalf of the Releasors, and each of them, covenant, promise, and agree that they will not, at any time, continue to prosecute, commence, file, initiate, institute, cause to be instituted, assist in instituting, or permit to be instituted

on their, his, her, or its behalf, or on behalf of any other individual or entity, any proceeding: (a) alleging or asserting any of his or her respective Released Claims against the Released Parties in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, including, without limitation, the Claims set forth in Section 18.1; or (b) challenging the validity of the Releases. To the extent any such proceeding exists in any court, tribunal or other forum as of the Effective Date, the Releasors covenant, promise and agree to withdraw, and seek a dismissal with prejudice of, such proceeding forthwith.

Section 18.5 No Release for Insurance Coverage.

(a) Notwithstanding anything herein to the contrary, this Settlement Agreement is not intended to and does not release any Governmental Payor or Medicare Part C or Part D Program sponsor from its or their obligation to provide any health insurance coverage, major medical insurance coverage, or disability insurance coverage to a Settlement Class Member, or from any claims, demands, rights, or causes of action of any kind that a Settlement Class Member has or hereafter may have with respect to such individuals or entities.

(b) Notwithstanding anything herein to the contrary, this Settlement Agreement is not intended to and does not effect a release of any rights or obligations that any insurer has under or in relation to any contract or policy of insurance to any named insured, insured, additional insured, or other insured person or entity thereunder, including those persons or entities referred to in Section 2.1(bbbb)(i)-(ii).

Section 18.6 No Release for Claims for Workers' Compensation and NFL CBA Medical and Disability Benefits. Nothing contained in this Settlement Agreement, including the Release and Covenant Not to Sue provisions in this ARTICLE XVIII, affects the rights of Settlement Class Members to pursue claims for workers' compensation and claims alleging entitlement to NFL CBA Medical and Disability Benefits. For the avoidance of any doubt, this Settlement Agreement does not alter the showing that Settlement Class Members must demonstrate to pursue successful claims for workers' compensation and/or successful claims alleging entitlement to NFL CBA Medical and Disability Benefits, nor does it alter the defenses to such claims available to Released Parties except as set forth in ARTICLE XXIX.

ARTICLE XIX

Bar Order

Section 19.1 Bar Order. As a condition to the Settlement, the Parties agree to move the Court for a bar order, as part of the Final Order and Judgment (substantially in the form of Exhibit 4), as set forth in Section 20.1.

Section 19.2 Judgment Reduction. With respect to any litigation by the Releasors against Riddell, the Releasors further agree that if a verdict in their favor results in a verdict or judgment for contribution or indemnity against the Released

Parties, the Releasors will not enforce their right to collect this verdict or judgment to the extent that such enforcement creates liability against the Released Parties. In such event, the Releasors agree that they will reduce their claim or agree to a judgment reduction or satisfy the verdict or judgment to the extent necessary to eliminate the claim of liability against the Released Parties or any Other Party claiming contribution or indemnity.

ARTICLE XX
Final Order and Judgment and Dismissal With Prejudice

Section 20.1 The Parties will jointly seek a Final Order and Judgment from the Court, substantially in the form of Exhibit 4, approval and entry of which shall be a condition of this Settlement Agreement, that:

- (a) Approves the Class Action Settlement in its entirety pursuant to Fed. R. Civ. P. 23(e) as fair, reasonable, and adequate;
- (b) Finds that this Settlement Agreement, with respect to each Subclass, is fair, reasonable, and adequate;
- (c) Confirms the certification of the Settlement Class for settlement purposes only;
- (d) Confirms the appointments of the Class and Subclass Representatives;
- (e) Confirms the appointments of Co-Lead Class Counsel, Class Counsel and Subclass Counsel;
- (f) Finds that the Settlement Class Notice satisfied the requirements set forth in Fed. R. Civ. P. 23(c)(2)(B);
- (g) Permanently bars, enjoins and restrains the Releasors (and each of them) from commencing, filing, initiating, prosecuting, asserting, and/or maintaining any and all Released Claims against any Released Party;
- (h) Dismisses with prejudice the Class Action Complaint, without further costs, including claims for interest, penalties, costs and attorneys' fees, except that the motion for an award of attorneys' fees and reasonable costs, as set forth in in Section 21.1, will be made at an appropriate time to be determined by the Court;
- (i) Orders the dismissal with prejudice, and without further costs, including claims for interest, penalties, costs, and attorneys' fees, of all Related Lawsuits pending in the Court as to the Released Parties, thereby effectuating in part the Releases;
- (j) Orders all Releasors with Related Lawsuits pending in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum,

other than the Court, promptly to dismiss with prejudice, and without further costs, including claims for interest, penalties, costs, and attorneys' fees, all such Related Lawsuits as to the Released Parties, thereby effectuating in part the Releases;

(k) Permanently bars and enjoins the commencement, assertion, and/or prosecution of any claim for contribution and/or indemnity in the Court, in any other federal court, state court, arbitration, regulatory agency, or other tribunal or forum between the Released Parties and all alleged joint tortfeasors, other than Riddell, together with an appropriate judgment reduction provision;

(l) Confirms the appointment of the Special Master, Garretson Group as the BAP Administrator, BrownGreer as the Claims Administrator, Garretson Group as the Liens Resolution Administrator, and Citibank, N.A. as the Trustee, and confirms that the Court retains continuing jurisdiction over those appointed;

(m) Confirms that the Court retains continuing jurisdiction over the "qualified settlement funds," as defined under §1.468B-1 of the Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986, as amended, created under the Settlement Agreement; and

(n) Expressly incorporates the terms of this Settlement Agreement and provides that the Court retains continuing and exclusive jurisdiction over the Parties, the Settlement Class Members and this Settlement Agreement, to interpret, implement, administer and enforce the Settlement Agreement in accordance with its terms.

ARTICLE XXI

Attorneys' Fees

Section 21.1 Award. Separately and in addition to the NFL Parties' payment of the monies set forth in ARTICLE XXIII and any consideration received by Settlement Class Members under this Settlement, the NFL Parties shall pay class attorneys' fees and reasonable costs. Class Counsel shall be entitled, at an appropriate time to be determined by the Court, to petition the Court on behalf of all entitled attorneys for an award of class attorneys' fees and reasonable costs. Provided that said petition does not seek an award of class attorneys' fees and reasonable costs exceeding One Hundred and Twelve Million, Five Hundred Thousand United States dollars (U.S. \$112,500,000), the NFL Parties agree not to oppose or object to the petition. Ultimately, the award of class attorneys' fees and reasonable costs to be paid by the NFL Parties is subject to the approval of the Court. For the avoidance of any doubt, the NFL Parties' obligation to pay class attorneys' fees and reasonable costs is limited to those attorneys' fees and reasonable costs ordered by the Court as a result of the initial petition by Class Counsel. The NFL Parties shall not be responsible for the payment of any further attorneys' fees and/or costs for the term of this Agreement. After the Effective Date, Co-Lead Class Counsel may petition the Court to set aside up to five percent (5%) of each Monetary Award and Derivative Claimant Award to

facilitate the Settlement program and related efforts of Class Counsel. These set-aside monies shall be held in a separate fund overseen by the Court. Any future petition for a set-aside will describe: (i) the proposed amount; (ii) how the money will be used; and (iii) any other relevant information (for example, the assurance that any “set-aside” from a Monetary Award or Derivative Claimant Award for a Settlement Class Member represented by his/her individual counsel will reduce the attorney’s fee payable to that counsel by the amount of the “set-aside”). No money will be held back or set aside from any Monetary Award or Derivative Claimant Award without Court approval. The NFL Parties believe that any such proposed set aside application is a matter strictly between and among Settlement Class Members, Class Counsel, and individual counsel for Settlement Class Members. The NFL Parties therefore take no position on the proposed set aside and will take no position on the proposed set aside in the event such an application is made.

Section 21.2 Payment. No later than sixty (60) days after the Effective Date, the NFL Parties will pay, or cause to be paid, a total of One Hundred and Twelve Million, Five Hundred Thousand United States dollars (U.S. \$112,500,000) into the Attorneys’ Fees Qualified Settlement Fund, as set forth in Section 23.7, to be held in escrow until such payment shall be made as directed by the Court.

ARTICLE XXII

Enforceability of Settlement Agreement and Dismissal of Claims

Section 22.1 It is a condition of this Settlement Agreement that the Court approve and enter the Preliminary Approval and Class Certification Order and Final Order and Judgment substantially in the form of Exhibit 4.

Section 22.2 The Parties agree that this Class Action Settlement is not final and enforceable until the Effective Date, except that upon entry of the Preliminary Approval and Class Certification Order, the NFL Parties will be obligated to make the Settlement Class Notice Payment as set forth in Sections 14.1, 23.1 and 23.3.

Section 22.3 From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, the Court will dismiss with prejudice all Released Claims by any and all Releasors against any and all Released Parties pending in the Court, and any and all Releasors with Related Lawsuits pending in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, other than the Court, will dismiss with prejudice the Related Lawsuits as to the Released Parties, including any related appeals.

Section 22.4 From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, the Parties agree that each and every Releasor will be permanently barred and enjoined from commencing, filing, initiating, instituting, prosecuting, and/or maintaining any judicial, arbitral, or regulatory action against any Released Party with respect to any and all Released Claims.

Section 22.5 From and after the Effective Date, for the consideration provided for herein and by operation of the Final Order and Judgment, this Settlement Agreement will be the exclusive remedy for any and all Released Claims by or on behalf of any and all Releasors against any and all Released Parties, and no Releasor will recover, directly or indirectly, any sums from any Released Parties for Released Claims other than those received for the Released Claims under the terms of this Settlement Agreement, if any.

Section 22.6 From and after the Effective Date, if any Releasor, in violation of Section 18.4, commences, files, initiates, or institutes any new action or other proceeding for any Released Claims against any Released Parties, or continues to prosecute any pending claims, or challenges the validity of the Releases, in any federal court, state court, arbitration, regulatory agency, or other tribunal or forum, such action or other proceeding will be dismissed with prejudice and at such Releasor's cost; provided, however, before any costs may be assessed, counsel for such Releasor or, if not represented, such Releasor, will be given reasonable notice and an opportunity voluntarily to dismiss such new action or proceeding with prejudice. Furthermore, if the NFL Parties or any other Released Party brings any legal action before the Court to enforce its rights under this Settlement Agreement against a Settlement Class Member and prevails in such action, that Released Party will be entitled to recover any and all related costs and expenses (including attorneys' fees) from any Releasor found to be in violation or breach of his or her obligations under this Article.

ARTICLE XXIII

NFL Payment Obligations

Section 23.1 Funding Amount. In consideration of the Releases and Covenant Not to Sue set forth in ARTICLE XVIII, and the dismissal with prejudice of the Class Action Complaint and the Related Lawsuits, and subject to the terms and conditions of this Settlement Agreement, the NFL Parties will pay in accordance with the funding terms set forth herein:

(a) Monetary Award Fund Amount. The amount of money sufficient to make all payments set forth in Section 23.3(b) for sixty-five (65) years from the Effective Date. For the avoidance of any doubt, the NFL Parties shall have no payment obligations under this Settlement Agreement after the end of the Monetary Award Fund sixty-five (65) year term;

(b) BAP Fund Amount. The amount of money, up to a maximum of Seventy-Five Million United States dollars (U.S. \$75,000,000), sufficient to make all payments set forth in Section 23.3(d), except that every qualified Retired NFL Football Player, as set forth in Section 5.1, is entitled to one baseline assessment examination. For the avoidance of any doubt, if the Seventy-Five Million United States dollars (U.S. \$75,000,000) is insufficient to cover the costs of one baseline assessment examination for every qualified Retired NFL Football Player electing to receive an examination by the deadline set forth in Section 5.3, the NFL Parties

agree to pay the amount of money necessary to provide the examinations in accordance with this Settlement Agreement;

(c) Education Fund Amount. Ten Million United States dollars (U.S. \$10,000,000), which monies will be used exclusively to fund the Education Fund;

(d) Settlement Class Notice Amount. Four Million United States dollars (U.S. \$4,000,000), to pay for Settlement Class Notice and related expenses; and

(e) Annual Compensation of the Special Master. The annual compensation of the Special Master appointed by the Court, whose total annual compensation shall not exceed Two Hundred Thousand United States dollars (U.S. \$200,000).

(f) Notwithstanding any provision of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, or any subsequent legislation mandating or subsidizing health insurance coverage, the NFL Parties will pay, or cause to be paid, in full the amounts set forth above in Section 23.1(a)-(e), and will not bill any Governmental Payor or Medicare Part C or Part D Program for any such costs.

Section 23.2 Exclusive Payments. For the avoidance of any doubt, other than as set forth in Section 21.2, the NFL Parties will have no additional payment obligations in connection with this Settlement Agreement.

Section 23.3 Funding Terms. The NFL Parties' payment obligations will be funded as follows:

(a) Education Fund. No later than thirty (30) days after the Effective Date, the NFL Parties will pay, or cause to be paid, a total of Ten Million United States dollars (U.S. \$10,000,000) into the Settlement Trust Account, as set forth in Section 23.5, for transfer by the Trustee into the Education Fund.

(b) Monetary Award Fund. The NFL Parties will pay, or cause to be paid six initial monthly installments of Twenty Million United States dollars (U.S. \$20,000,000) each, into the Settlement Trust Account for transfer by the Trustee into the Monetary Award Fund, beginning no later than thirty (30) days after the Effective Date. If additional funds are necessary in any given month during this six month period, they shall be requested and paid in accordance with the procedures set forth in section 23.3(b)(i)-(iv). The Claims Administrator shall provide in writing to the NFL Parties and Co-Lead Class Counsel a monthly report for this initial six month period that includes an accounting of the items set forth in Section 23.3(b)(i)-(5).

(i) Beginning no later than thirty (30) days after the Effective Date, on or before the 10th day of each month, the Claims Administrator shall provide in writing to the NFL Parties and Co-Lead Class Counsel a monthly funding request identifying the monetary amount necessary to pay all final and accrued Monetary Awards, Derivative Claimant Awards and the costs and expenses paid out of the Monetary Award Fund, as set forth in Section 23.5(d)(ii), and any additional amount necessary to maintain the Monetary Award Fund targeted reserve, as set forth in Section 23.3(b)(v), after all final and accrued Monetary Awards, Derivative Claimant Awards and costs and expenses are paid. This monthly funding request shall provide, in addition to the total monetary amount requested, an accounting of:

(1) The name of each Settlement Class Member with a final and accrued Monetary Awards or Derivative Claimant Award since the last monthly funding request, identification of his/her counsel, identification of the Award as a Monetary Award or Derivative Claimant Award, the Award amount, and identification of any “holdback” amount deducted from the Award as set forth in Sections 9.1(c)(ii) and 9.2(b)(ii), 11.3(g) and 11.3(h);

(2) The amount of costs and expenses related to the appeals process, as set forth in ARTICLE IX, since the last monthly funding request;

(3) The amount of costs and expenses of claims administration, as set forth in ARTICLE X, since the last monthly funding request;

(4) The amount of costs and expenses of the Lien identification and resolution process, as set forth in ARTICLE XI, since the last monthly funding request;

(5) The amount necessary to maintain the Monetary Award Fund targeted reserve, as set forth in Section 23.3(b)(v), after all final and accrued Monetary Awards, Derivative Claimant Awards, and costs and expenses are paid.

(ii) Subject to the objection process set forth in Section 23.3(b)(iii), the NFL Parties will pay, or cause to be paid, within thirty (30) days of receipt of the written monthly funding request, a payment of the total amount requested into the Settlement Trust Account for transfer by the Trustee into the Monetary Award Fund.

(iii) Within ten (10) days after receipt of the written monthly funding request, the NFL Parties and Co-Lead Class Counsel shall each notify the Claims Administrator in writing of any objection to any aspect of the funding request. If an objection is timely made, the NFL Parties, will pay, or cause to be paid, within thirty (30) days of such written monthly funding request, a payment of the undisputed portion of the total amount requested into the Settlement Trust Account for

transfer by the Trustee into the Monetary Award Fund. The NFL Parties, Co-Lead Class Counsel and the Claims Administrator shall use their best efforts to resolve any objections within fifteen (15) days after receipt of the written monthly funding request. If the NFL Parties, Co-Lead Class Counsel and the Claims Administrator are unable to resolve the objection within twenty (20) days after receipt of the written monthly funding request, the objecting party shall present the matter in writing to the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof).

(1) After an agreement on the resolution of an objection, or a decision by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof) resolving an objection by requiring the NFL Parties to pay, or cause to be paid, additional amounts beyond the undisputed portion of the monthly funding request, the NFL Parties will pay, or cause to be paid, the additional amounts beyond the undisputed portion of the monthly funding request within the longer of thirty (30) days of receiving the written monthly funding request or ten (10) days after resolution of the objection.

(iv) Within ten (10) days after transfer of funds into the Monetary Award Fund pursuant to a monthly funding request or decision of the Special Master or Court, as set forth in Section 23.3(b)(iii)(1), the Claims Administrator shall cause payment to be issued on all applicable final and accrued Monetary Awards, Derivative Claimant Awards and costs and expenses paid out of the Monetary Award Fund, as set forth in Section 23.5(d)(ii).

(v) The Monetary Award Fund shall maintain a targeted reserve, as set forth in Section 23.3(b)(v)(1), beyond the monetary amounts necessary to pay written monthly funding requests, which reserve may be used to pay any costs and expenses that must be satisfied pursuant to a contractual or other legal obligation before receipt of the monthly funding request amount and that are properly paid out of the Monetary Award Fund, as set forth in Section 23.5(d)(ii). The Claims Administrator shall report promptly any such payments from the Monetary Award Fund to the NFL Parties and Co-Lead Class Counsel. Either Co-Lead Class Counsel or Counsel for the NFL Parties may challenge the appropriateness of such payments, in which case the Court will determine (or may, in its discretion, refer the challenge to the Special Master to determine) the appropriateness of such payments. If the Court or Special Master, as applicable, determines that any such payment constituted willful misconduct, the Court or Special Master may, in its discretion, deduct that amount from the compensation of the Claims Administrator.

(1) The Monetary Award Fund shall maintain a targeted reserve of: (i) Ten Million United States dollars (U.S. \$10,000,000) during the first through tenth years of the Monetary Award Fund; (ii) Five Million United States dollars (U.S. \$5,000,000) during the eleventh through fiftieth years of the Monetary Award Fund; (iii) One Million United States dollars (\$1,000,000) during the fifty-first through sixtieth years of the Monetary Award Fund; and (iv) Two Hundred

and Fifty Thousand United States dollars (U.S. \$250,000) during the sixty-first through sixty-fifth years of the Monetary Award Fund.

(c) During the eleventh, fifty-first, and sixty-first years of the Monetary Award Fund, monthly funding requests shall first be satisfied by the money constituting the balance in the Monetary Award Fund until the revised targeted reserve, as set forth in Section 23.3(b)(v)(1), is achieved. For example, in the eleventh year of the Monetary Award Fund, all monthly funding requests shall be paid from the Monetary Award Fund balance until the reserve is reduced to Five Million United States dollars (\$5,000,000). The process for the monthly funding request shall otherwise remain as set forth in Section 23.3(b).

(d) BAP Fund. No later than thirty (30) days after the Effective Date, the NFL Parties will pay, or cause to be paid, a total of Thirty-Five Million United States dollars (U.S. \$35,000,000) into the Settlement Trust Account for transfer by the Trustee into the BAP Fund. If at any point following the Effective Date until the expiration the five-year period for the provision of BAP Supplemental Benefits, as set forth in Sections 5.5 and 5.11, the balance of the BAP Fund falls below Ten Million United States dollars (U.S. \$10,000,000), the NFL Parties, upon written notice from the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), who shall act upon application of the BAP Administrator, will pay, or cause to be paid, within thirty (30) days of such written notice, additional payments into the Settlement Trust Account for transfer by the Trustee into the BAP Fund in order to maintain a balance of no less than Ten Million United States dollars (U.S. \$10,000,000), and no more than Eleven Million United States dollars (U.S. \$11,000,000). Under no circumstances will the aggregate transfers to the BAP Fund exceed Seventy-Five Million United States dollars (U.S. \$75,000,000) in total, except if necessary to provide every qualified Retired NFL Football Player with one baseline assessment examination as provided for in Sections 5.1 and 23.1(b). Any funds remaining in the BAP Fund at the conclusion of the five-year period for the provision of BAP Supplemental Benefits, as set forth in Sections 5.5 and 5.11, shall be transferred to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

(e) Class Notice Costs. No later than five (5) days after the date of the Preliminary Approval and Class Certification Order, the NFL Parties will pay, or cause to be paid, a total of Four Million United States dollars (U.S. \$4,000,000) to Co-Lead Class Counsel for the Settlement Class Notice and related expenses, as set forth in Section 14.1.

(f) Prepayment Right. The NFL Parties will have the right (but not the obligation) to prepay, or cause to be prepaid, any of their payment obligations to the Funds under the Settlement Agreement. In connection with any such prepayment, the NFL Parties will designate in writing the payment obligation that is being prepaid and how such prepayment should affect the NFL Parties' remaining payment obligations (*i.e.*, whether the amount prepaid should be credited against the

next payment obligation or to one or more subsequent payment obligations or a combination thereof).

Section 23.4 No Interest or Inflation Adjustment. For the avoidance of any doubt, the payments set forth in Section 23.1 will not be subject to any interest obligation or inflation adjustment.

Section 23.5 Settlement Trust

(a) Promptly following the Effective Date, Co-Lead Class Counsel and Counsel for the NFL Parties will file a motion seeking the creation of a Settlement Trust under Delaware law and the appointment of the Trustee. Co-Lead Class Counsel and Counsel for the NFL Parties will file a proposed Settlement Trust Agreement with the Court.

(b) Co-Lead Class Counsel and Counsel for the NFL Parties will jointly recommend Citibank, N.A. as the Trustee, subject to the approval of the Court. The Trustee may be replaced by joint motion made by Co-Lead Class Counsel and Counsel for the NFL Parties, and granted by the Court. If the Trustee resigns, dies, is replaced, or is otherwise unable to continue employment in that position, Co-Lead Class Counsel and Counsel for the NFL Parties will agree to and jointly recommend a new proposed Trustee for appointment by the Court.

(c) Upon Court approval of the proposed Settlement Trust Agreement, Co-Lead Class Counsel, the NFL Parties, the Trustee and the Special Master, will execute the Settlement Trust Agreement approved by the Court, thereby creating the Settlement Trust. The Settlement Trust will be structured and operated in a manner so that it qualifies as a “qualified settlement fund” under §1.468B-1 of the Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986, as amended.

(d) The Settlement Trust will be composed of the Funds. The Trustee will establish the Settlement Trust Account, into which the NFL Parties will make payments as required by this Settlement Agreement. The Trustee will also establish three separate funds (the “Funds”), into which the Trustee will transfer funds at the direction of the Special Master (or the Claims Administrator after expiration of the term of the Special Master and extension(s) thereof) and pursuant to the terms of this Settlement Agreement and on which the Special Master (or the Claims Administrator after expiration of the term of the Special Master and any extension(s) thereof) will have signatory authority. These Funds will constitute a single qualified settlement fund:

(i) The BAP Fund, which will be used to make payments for the BAP, as set forth in ARTICLE V.

(ii) The Monetary Award Fund, which will be used to make payments for: (a) all Monetary Awards and Derivative Claimant Awards, as set forth in ARTICLE VI and ARTICLE VII; (b) certain costs and expenses of the appeals

process, as set forth in ARTICLE IX; (c) costs and expenses of claims administration, as set forth in ARTICLE X; and (d) certain costs and expenses of the Lien identification and resolution process, as set forth in ARTICLE XI;

(iii) The Education Fund, which will be used exclusively to make payments to support education programs and initiatives, as set forth in ARTICLE XII; and

(iv) The Settlement Trust Account, which will be used solely to transfer funds into the Funds described above in Section 23.5(d)(i)-(iii).

(e) The Settlement Trust will be managed by the Trustee as provided in the Settlement Trust Agreement, and both the Settlement Trust and Trustee will be subject to the continuing jurisdiction and supervision of the Court. Each of the Funds will be maintained in separate bank accounts at one or more federally insured depository institutions approved by Co-Lead Class Counsel and Counsel for the NFL Parties. The Trustee will have the authority to make payments from the Settlement Trust Account into the other Funds at the direction of the Special Master (or the Claims Administrator after expiration of the term of the Special Master and any extension(s) thereof) and to make disbursements from the Funds at the direction of the Special Master (or the Claims Administrator at the direction of Co-Lead Class Counsel and Counsel for the NFL Parties, after expiration of the term of the Special Master and any extension(s) thereof), and consistent with the terms of this Settlement Agreement and the Settlement Trust Agreement.

(f) The Trustee will be responsible for making any necessary tax filings and payments of taxes, estimated taxes, and associated interest and penalties, if any, by the Settlement Trust and responding to any questions from, or audits regarding such taxes by, the Internal Revenue Service or any state or local tax authority. The Trustee also will be responsible for complying with all tax information reporting and withholding requirements with respect to payments made by the Settlement Trust, as well as paying any associated interest and penalties. Any such taxes, interest, and penalty payments will be paid by the Trustee from the Monetary Award Fund.

Section 23.6 Funds Investment

(a) To the extent funds are available for investment, amounts deposited in each of the Funds will be invested conservatively in a manner designed to assure timely availability of funds, protection of principal and avoidance of concentration risk.

(b) Any earnings attributable to the BAP Fund, the Monetary Award Fund, and/or the Education Fund will be retained in the respective Fund.

Section 23.7 Attorneys' Fees Qualified Settlement Fund. Unless the Court directs otherwise, a separate fund (intended to qualify as a "qualified settlement fund" under §1.468B-1 of the Treasury Regulations promulgated under Sections 461(h)

and 468B of the Internal Revenue Code of 1986, as amended) will be established out of which attorneys' fees will be paid pursuant to order of the Court, as set forth in ARTICLE XXI. This separate qualified settlement fund will be established pursuant to order of the Court, and will operate under Court supervision and control. This separate qualified settlement fund will be separate from the qualified settlement fund described in Section 23.5(c) and any of the Funds described therein, and will not be administered by the Trustee. The Court will determine the form and manner of administering this fund, in which the NFL Parties will have no reversionary interest.

Section 23.8 Trustee Satisfaction of Monetary Obligations. Wherever in this Settlement Agreement the Special Master, BAP Administrator, Claims Administrator, or Lien Resolution Administrator is authorized or directed, as the context may reflect, to pay, disburse, reimburse, hold, waive, or satisfy any monetary obligation provided for or recognized under any of the terms of this Settlement Agreement, the Special Master, BAP Administrator, Claims Administrator, or Lien Resolution Administrator may comply with such authorization or direction by directing the Trustee to, as appropriate, pay, disburse, reimburse, hold, waive, or satisfy any such monetary obligation.

ARTICLE XXIV

Denial of Wrongdoing, No Admission of Liability

Section 24.1 This Settlement Agreement, whether or not the Class Action Settlement becomes effective, is for settlement purposes only and is to be construed solely as a reflection of the Parties' desire to facilitate a resolution of the Class Action Complaint and of the Released Claims and Related Lawsuits. The NFL Parties expressly deny that they, or the other Released Parties, have violated any duty to, breached any obligation to, committed any fraud on, or otherwise engaged in any wrongdoing with respect to, the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member, or any Opt Out, and expressly deny the allegations asserted in the Class Action Complaint and Related Lawsuits, and deny any and all liability related thereto. Neither this Settlement Agreement nor any actions undertaken by the NFL Parties or the Released Parties in the negotiation, execution, or satisfaction of this Settlement Agreement will constitute, or be construed as, an admission of any liability or wrongdoing, or recognition of the validity of any claim made by the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member, or any Opt Out, in this or any other action or proceeding.

Section 24.2 In no event will the Settlement Agreement, whether or not the Class Action Settlement becomes effective, or any of its provisions, or any negotiations, statements, or court proceedings relating to its provisions, or any actions undertaken in this Settlement Agreement, in any way be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, of any kind, or used in any other fashion, by the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member, Class Counsel, or any of the Released Parties in any litigation, action, hearing, or any judicial, arbitral, administrative, regulatory or other proceeding for any purpose, except a proceeding to resolve a dispute arising

under, or to enforce, the Settlement Agreement. Without limiting the foregoing, neither the Settlement Agreement nor any of its provisions, negotiations, statements, or court proceedings relating to its provisions, nor any actions undertaken in this Settlement Agreement, will be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, or as a waiver by the Released Parties of any applicable defense, or as a waiver by the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member of any claims, causes of action, or remedies. This Section 24.2 shall not apply to disputes between the NFL Parties and their insurers, as to which the NFL Parties reserve all rights.

ARTICLE XXV

Representations and Warranties

Section 25.1 Authority. Class Counsel represent and warrant as of the date of the Settlement Date Agreement, as amended, that they have authority to enter into this Settlement Agreement on behalf of the Class and Subclass Representatives.

Section 25.2 Class and Subclass Representatives. Each of the Class and Subclass Representatives, through a duly authorized representative, represents and warrants that he: (i) has agreed to serve as a representative of the Settlement Class proposed to be certified herein; (ii) is willing, able, and ready to perform all of the duties and obligations as a representative of the Settlement Class; (iii) is familiar with the pleadings in In re: National Football League Players' Concussion Injury Litigation, MDL 2323, or has had the contents of such pleadings described to him; (iv) is familiar with the terms of this Settlement Agreement, including the exhibits attached to this Settlement Agreement, or has received a description of the Settlement Agreement, including the exhibits attached to this Settlement Agreement, from Class Counsel, and has agreed to its terms; (v) has consulted with, and received legal advice from, Class Counsel about the litigation, this Settlement Agreement (including the advisability of entering into this Settlement Agreement and its Releases and the legal effects of this Settlement Agreements and its Releases), and the obligations of a representative of the Settlement Class; (vi) has authorized Class Counsel to execute this Settlement Agreement on his behalf; and (vii) will remain in and not request exclusion from the Settlement Class and will serve as a representative of the Settlement Class until the terms of this Settlement Agreement are effectuated, this Settlement Agreement is terminated in accordance with its terms, or the Court at any time determines that such Class or Subclass Representative cannot represent the Settlement Class.

Section 25.3 NFL Parties. The NFL Parties represent and warrant as of the date of the Settlement Date Agreement, as amended, that: (i) they have all requisite corporate power and authority to execute, deliver, and perform this Settlement Agreement; (ii) the execution, delivery, and performance by the NFL Parties of this Settlement Agreement has been duly authorized by all necessary corporate action; (iii) this Settlement Agreement has been duly and validly executed and delivered by the

NFL Parties; and (iv) this Settlement Agreement constitutes their legal, valid, and binding obligation.

Section 25.4 NFL Parties' Representation and Warranty Regarding Member Clubs. The NFL Parties represent and warrant as of the date of the Settlement Date Agreement, as amended, that the current Member Clubs have duly authorized the execution, delivery, and performance by the NFL Parties of this Settlement Agreement.

Section 25.5 Investigation and Future Events. The Parties and their counsel represent and warrant that they have each performed an independent investigation of the allegations of fact and law made in connection with the Class Action Complaint in In re: National Football League Players' Concussion Injury Litigation, MDL No. 2323, and may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of this Settlement Agreement. Nevertheless, the Parties intend to resolve their disputes pursuant to the terms of this Settlement Agreement and thus, in furtherance of their intentions, this Settlement Agreement will remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Settlement Agreement will not be subject to rescission or modification by reason of any change or difference in facts or law.

Section 25.6 Security

(a) The NFL Parties represent and warrant that the NFL currently maintains, and will continue to maintain, an investment grade rating on its Stadium Program Bonds, as rated by Fitch Ratings. This investment grade rating shall serve as security that the NFL Parties will meet their payment obligations as set forth in Section 23.3 for the first ten years of the Settlement following the Effective Date.

(b) If the identity of the rating agency that rates the NFL's Stadium Program Bonds changes during the first ten years of the Settlement from the Effective Date, then an investment grade rating by the new rating agency on the NFL's Stadium Program Bonds will satisfy the NFL Parties' obligations under Section 25.6(a).

(c) The applicable definition of "investment grade" will be as provided by the rating agency rating the NFL's Stadium Program Bonds.

(d) No later than the tenth anniversary of the Effective Date (the "Tenth Anniversary Date"), the NFL Parties shall establish, or cause to be established, a special-purpose Delaware statutory trust (the "Statutory Trust"), with an independent trustee, that will be funded and managed as follows: the NFL Parties shall contribute cash to the Statutory Trust so that as of the Tenth Anniversary Date, it shall contain funds that, in the reasonable belief of the NFL Parties, and after taking into account reasonably expected investment returns over time, will be sufficient to satisfy the NFL Parties' remaining anticipated payment obligations, as set forth in

Section 23.5(d)(ii), as they come due. In the event that the remaining anticipated payment obligations on the Tenth Anniversary Date materially exceed the NFL Parties' reasonable expectations as of the Effective Date due to participation rates and/or the claims experience during the first ten years of the Settlement, the NFL Parties may apply to the Court to fund the Statutory Trust as follows: seventy percent of the required funds to be contributed by the NFL Parties to the Statutory Trust by the Tenth Anniversary Date and the remaining thirty percent of the required funds to be contributed on a three-year schedule set by the Court so that all required funds are deposited in the Statutory Trust no later than the thirteenth anniversary of the Effective Date. The NFL Parties shall not have the right to pledge or assign the property of the Statutory Trust (including any investment returns earned thereon and remaining in the Statutory Trust, as provided herein) to any third-party, and, as contemplated by §3805(b) of Title 12 of the Delaware Code, no other creditor of any of the NFL Parties shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the Statutory Trust. The documents governing the Statutory Trust will provide that the NFL Parties may direct how the funds in the Statutory Trust are invested from time to time, but the Trustee will be instructed to permit withdrawals of funds from the Statutory Trust only for the limited purposes of: (i) satisfying the NFL Parties' payment obligations under this Settlement Agreement as set forth in Section 23.5(d)(ii); (ii) the NFL Parties' costs and expenses related to the Statutory Trust, including, without limitation, taxes, investment-related expenses and administrative costs; (iii) the return of excess monies in the Statutory Trust to the NFL Parties based on attaining investment returns exceeding the amount necessary to satisfy the NFL Parties' remaining anticipated payment obligations, but only upon Court approval; (iv) the return of excess monies in the Statutory Trust to the NFL Parties based on reductions to the NFL Parties' remaining anticipated payment obligations, but only upon Court approval; or (v) upon the completion of the NFL Parties' payment obligations, as set forth in this Settlement Agreement, but only upon Court approval. To the extent that Court approval is required for the withdrawal of funds from the Statutory Trust, such approval shall be granted unless there has been either a material default on the NFL Parties' payment obligations within the prior thirty (30) days, or upon a showing, by clear and convincing evidence, that the proposed withdrawal would materially impair the Settlement Agreement.

(e) In the event of a material default by the NFL Parties in satisfying their payment obligations as set forth in this Settlement Agreement, and the NFL Parties' failure to cure any such material default within sixty (60) days of written notification of such default by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), Co-Lead Class Counsel shall have the right to petition the Court to make a finding that there has been a material, uncured default in satisfying the NFL Parties' payment obligations and to enter an order directing the NFL Parties to meet their payment obligations. Beginning on the Tenth Anniversary Date, any such petition by Co-Lead Class Counsel may request that the Court direct the NFL Parties to meet their payment obligations with the funds available in the Statutory Trust established by the NFL Parties pursuant to Section 25.6(d).

(f) The NFL Parties historically have maintained liability insurance policies under which they are seeking coverage and are pursuing their rights to recover under said policies. It is understood that if the NFL Parties secure funding commitments from one or more insurers under their historical policies, or a court order obligating one or more such insurers to fund in whole or in part certain of the NFL Parties' obligations under this Settlement Agreement, after such insurance funding is deposited into the Statutory Trust, the NFL Parties may seek Court approval to reduce, dollar-for-dollar, the equivalent amount of such funding for anticipated remaining liabilities that otherwise would be required to be deposited in the Statutory Trust by the NFL Parties pursuant to Section 25.6(d). In addition, if the NFL Parties obtain additional insurance policies from one or more third-party insurers with a rating of A or above, to insure in whole or in part certain of their obligations under the Settlement, the NFL Parties may seek Court approval to reduce, dollar-for-dollar, the equivalent amount of funding for anticipated remaining liabilities that otherwise would be required to be deposited in the Statutory Trust by the NFL Parties pursuant to Section 25.6(d). To do so, the NFL Parties must demonstrate to the Court that the Court or the Statutory Trust provided for in Section 25.6(d) will have sufficient control over such insurance policies and their proceeds to ensure that the proceeds are available to meet the NFL Parties' payment obligations, if necessary.

(g) In the event the Court enters an order pursuant to Section 25.6(e) directing the NFL Parties to meet their payment obligations pursuant to Section 23.3 and the NFL Parties fail materially to comply with such Order, as set forth in Section 25.6(e), Co-Lead Class Counsel may request that the Court provide the NFL Parties sixty (60) days to show cause why the Court shall not render null and void the Releases and Covenants Not to Sue provided to Released Parties, as set forth in Section 18.1, by Settlement Class Members who: (i) have received a final, favorable Notice of Registration Determination, as set forth in Section 4.3, and have not received a final and accrued Monetary Award or final and accrued Derivative Claimant Award as of the date of such application; or (ii) who have only received a final and accrued Monetary Award for a Level 1.5 Neurocognitive Impairment or a final and accrued Derivative Claimant Award for a Level 1.5 Neurocognitive Impairment as of the date of such application. For the avoidance of any doubt, all other Releases and Covenants Not to Sue shall remain effective. In the event that a Settlement Class Member's Release and Covenant Not to Sue is rendered null and void, such Settlement Class Member shall not challenge, if applicable, any Released Party's right to offset any final judgment received by the Settlement Class Member as a result of Section 25.6(g)(ii) in the amount of the Monetary Award or Derivative Claimant Award received by the Settlement Class Member. For the avoidance of any doubt, nothing in this subsection 25.6, shall affect any rights or obligations of Settlement Class Members and Released Parties as otherwise provided in, or with respect to, this Settlement Agreement or any breach thereof.

ARTICLE XXVI

Cooperation

Section 26.1 The Parties will cooperate, assist, and undertake all reasonable actions to accomplish the steps contemplated by this Settlement Agreement and to implement the Class Action Settlement on the terms and conditions provided herein.

Section 26.2 The Parties agree to take all actions necessary to obtain final approval of the Class Action Settlement and entry of a Final Order and Judgment, including the terms and provisions described in this Settlement Agreement, and, upon final approval and entry of such order, an order dismissing the Class Action Complaint and Related Lawsuits with prejudice as to the Class and Subclass Representatives, the Settlement Class, and each Settlement Class Member.

Section 26.3 The Parties and their counsel agree to support the final approval and implementation of this Settlement Agreement and defend it against objections, appeal, collateral attack or any efforts to hinder or delay its approval and implementation. Neither the Parties nor their counsel, directly or indirectly, will encourage any person to object to the Class Action Settlement or assist them in doing so.

ARTICLE XXVII

Continuing Jurisdiction

Section 27.1 Pursuant to the Final Order and Judgment, the Court will retain continuing and exclusive jurisdiction over the Parties and their counsel, all Settlement Class Members, the Special Master, BAP Administrator, Claims Administrator, Liens Resolution Administrator, Appeals Advisory Panel, Appeals Advisory Panel Consultants, and Trustee with respect to the terms of the Settlement Agreement. Any disputes or controversies arising out of, or related to, the interpretation, implementation, administration, and enforcement of this Settlement Agreement will be made by motion to the Court. In addition, the Parties, including each Settlement Class Member, are hereby deemed to have submitted to the exclusive jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of, or relating to, this Settlement Agreement. The terms of the Settlement Agreement will be incorporated into the Final Order and Judgment of the Court, which will allow that Final Order and Judgment to serve as an enforceable injunction by the Court for purposes of the Court's continuing jurisdiction related to the Settlement Agreement.

(a) Notwithstanding any contrary law applicable to the underlying claims, this Settlement Agreement and the Releases hereunder will be interpreted and enforced in accordance with the laws of the State of New York, without regard to conflict of law principles.

ARTICLE XXVIII

Role of Co-Lead Class Counsel, Class Counsel and Subclass Counsel

Section 28.1 Co-Lead Class Counsel and Class Counsel acknowledge that, under applicable law, their respective duty is to the entire Settlement Class, to act in the best interest of the Settlement Class as a whole, with respect to promoting, supporting, and effectuating, as fair, adequate, and reasonable, the approval, implementation, and administration of the settlement embodied in the Settlement Agreement, and that their professional responsibilities as attorneys are to be viewed in this light, under the ongoing supervision and jurisdiction of the Court that appoints them to represent the interests of the Settlement Class.

Section 28.2 Subclass Counsel acknowledge that, under applicable law, their respective duty is to their respective Subclasses, to act in the best interest of the respective Subclass as a whole, with respect to promoting, supporting, and effectuating, as fair, adequate, and reasonable, the approval, implementation, and administration of the settlement embodied in the Settlement Agreement, and that their professional responsibilities as attorneys are to be viewed in this light, under the ongoing supervision and jurisdiction of the Court that appoints them to represent the interests of the respective Subclass.

ARTICLE XXIX

Bargained-For Benefits

Section 29.1 Nothing in the Collective Bargaining Agreement will preclude Settlement Class Members from receiving benefits under the Settlement Agreement. In addition, the fact that a Settlement Class Member has signed, or will sign, a release and covenant not to sue pursuant to Article 65 of the 2011 Collective Bargaining Agreement will not preclude the Settlement Class Member from receiving benefits under the Settlement Agreement, and the NFL Parties agree not to assert any defense or objection to the Settlement Class Member's receipt of benefits under the Settlement Agreement on the ground that he executed a release and covenant not to sue pursuant to Article 65 of the 2011 Collective Bargaining Agreement.

Section 29.2 A Retired NFL Football Player's participation in the Settlement Agreement will not in any way affect his eligibility for bargained-for benefits under the Collective Bargaining Agreement or the terms or conditions under which those benefits are provided, except as set forth in Section 18.1.

ARTICLE XXX

Miscellaneous Provisions

Section 30.1 No Assignment of Claims. Neither the Settlement Class nor any Class or Subclass Representative or Settlement Class Member has assigned, will assign, or will attempt to assign, to any person or entity other than the NFL Parties any rights or claims relating to the subject matter of the Class Action Complaint. Any such assignment, or attempt to assign, to any person or entity other than the NFL

Parties any rights or claims relating to the subject matter of the Class Action Complaint will be void, invalid, and of no force and effect and the Claims Administrator shall not recognize any such action.

Section 30.2 Individual Counsel

(a) Counsel individually representing a Settlement Class Member shall provide notice of his or her representation to the Claims Administrator within thirty (30) days of the Effective Date or within thirty (30) days of the retention if Counsel is retained after the Effective Date. Counsel acting on his or her client's behalf may submit all claim forms, proof, correspondence, or other documents to the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator on behalf of that Settlement Class Member; provided, however, that counsel individually representing a Settlement Class Member may not sign on behalf of that Settlement Class Member: (i) an Opt Out request; (ii) a revocation of an Opt Out; (iii) an objection, as set forth in Section 14.3; (iv) a Claim Form, (v) a Derivative Claim Form, or (vi) an Appeals Form.

(b) Where a Settlement Class Member indicates in writing to the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator that he or she is individually represented by counsel, the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator will copy the counsel individually representing a Settlement Class Member on any written communications with the Settlement Class Member. Any communications, whether written or oral, by the Special Master, BAP Administrator, Claims Administrator or Lien Resolution Administrator with counsel individually representing a Settlement Class Member will be deemed to be a communication directly with such individually represented Settlement Class Member.

Section 30.3 Integration. This Settlement Agreement and its exhibits, attachments, and appendices will constitute the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, letters, conversations, agreements, term sheets, and understandings, whether written or oral, relating to the subject matter of this Settlement Agreement, including the Settlement Term Sheet dated August 29, 2013. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, agreement, arrangement, or understanding, whether written or oral, concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement.

Section 30.4 Headings. The headings used in this Settlement Agreement are intended for the convenience of the reader only and will not affect the meaning or interpretation of this Settlement Agreement in any manner. Any inconsistency between the headings used in this Settlement Agreement and the text of the Articles and Sections of this Settlement Agreement will be resolved in favor of the text.

Section 30.5 Incorporation of Exhibits. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, any inconsistency between this Settlement Agreement and any attachments, exhibits, or appendices hereto will be resolved in favor of this Settlement Agreement.

Section 30.6 Amendment. This Settlement Agreement will not be subject to any change, modification, amendment, or addition without the express written consent of Class Counsel and Counsel for the NFL Parties, on behalf of all Parties to this Settlement Agreement, and upon Court approval.

Section 30.7 Mutual Preparation. The Parties have negotiated all of the terms and conditions of this Settlement Agreement at arm's length. Neither the Settlement Class Members nor the NFL Parties, nor any one of them, nor any of their counsel will be considered to be the sole drafter of this Settlement Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement. This Settlement Agreement will be deemed to have been mutually prepared by the Parties and will not be construed against any of them by reason of authorship.

Section 30.8 Beneficiaries. This Settlement Agreement will be binding upon the Parties and will inure to the benefit of the Settlement Class Members and the Released Parties. All Released Parties who are not the NFL Parties are intended third-party beneficiaries who are entitled to enforce the terms of the Releases and Covenant Not to Sue set forth in ARTICLE XVIII. No provision in this Settlement Agreement is intended to create any third-party beneficiary to this Settlement Agreement other than the Released Parties. Nothing expressed or implied in this Settlement Agreement is intended to or will be construed to confer upon or give any person or entity other than Class and Subclass Representatives, the Settlement Class Members, Class Counsel, the NFL Parties, the Released Parties, and Counsel for the NFL Parties, any right or remedy under or by reason of this Settlement Agreement.

Section 30.9 Extensions of Time. Co-Lead Class Counsel and Counsel for the NFL Parties may agree in writing, subject to approval of the Court where required, to reasonable extensions of time to implement the provisions of this Settlement Agreement.

Section 30.10 Execution in Counterparts. This Settlement Agreement may be executed in counterparts, and a facsimile signature will be deemed an original signature for purposes of this Settlement Agreement.

Section 30.11 Good Faith Implementation. Co-Lead Class Counsel and Counsel for the NFL Parties will undertake to implement the terms of this Settlement Agreement in good faith. Before filing any motion or petition in the Court raising a dispute arising out of or related to this Settlement Agreement, Co-Lead Class Counsel

and Counsel for the NFL Parties will consult with each other in good faith and certify to the Court that they have conferred in good faith.

Section 30.12 Force Majeure. The Parties will be excused from any failure to perform timely any obligation hereunder to the extent such failure is caused by war, acts of public enemies or terrorists, strikes or other labor disturbances, fires, floods, acts of God, or any causes of the like or different kind beyond the reasonable control of the Parties.

Section 30.13 Waiver. The waiver by any Party of any breach of this Settlement Agreement by another Party will not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

Section 30.14 Tax Consequences. No opinion regarding the tax consequences of this Settlement Agreement to any individual Settlement Class Member is being given or will be given by the NFL Parties, Counsel for the NFL Parties, Class and Subclass Representatives, Class Counsel, nor is any representation or warranty in this regard made by virtue of this Settlement Agreement. Settlement Class Members must consult their own tax advisors regarding the tax consequences of the Settlement Agreement, including any payments provided hereunder and any tax reporting obligations they may have with respect thereto. Each Settlement Class Member's tax obligations, and the determination thereof, are his or her sole responsibility, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member. The NFL Parties, Counsel for the NFL Parties, Class Counsel will have no liability or responsibility whatsoever for any such tax consequences resulting from payments under this Settlement Agreement. To the extent required by law, the Claims Administrator will report payments made under the Settlement Agreement to the appropriate authorities.

Section 30.15 Issuance of Notices and Submission of Materials. In any instance in which this Settlement Agreement requires the issuance of any notice regarding registration, a claim or an award, unless specified otherwise in this Settlement Agreement, such notice must be issued by: (a) online submission through any secure web-based portal established by the Claims Administrator for this purpose to the Settlement Class Member or NFL Parties, which shall be accompanied by an email certifying receipt; or (b) U.S. mail (or its foreign equivalent). In any instance in which this Settlement Agreement requires submission of materials by or on behalf of a Settlement Class Member or the NFL Parties, unless specified otherwise in this Settlement Agreement, such submission must be made by: (a) online submission through any secure web-based portal established by the Claims Administrator for this purpose; or (b) U.S. mail (or its foreign equivalent); or (c) delivery. Written notice to the Class Representatives or Co-Lead Class Counsel must be given to: Christopher A. Seeger, Seeger Weiss LLP, 77 Water Street, New York, New York 10005; and Sol Weiss, Anapol Schwartz, 1710 Spruce Street, Philadelphia, PA 19103. Written notice to the NFL Parties or Counsel for the NFL Parties must be given to: Jeffrey Pash, Executive Vice President and General Counsel, National Football League, 345 Park

Avenue, New York, New York 10154; Anastasia Danias, Senior Vice President and Chief Litigation Officer, National Football League, 345 Park Avenue, New York, New York 10154; and Brad S. Karp, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, or such other person or persons as shall be designated by the Parties.

Section 30.16 Party Burden. Unless explicitly provided otherwise, whenever a showing is required to be made in this Settlement Agreement, the party seeking the relief shall bear the burden of substantiation.

Agreed to as of this ~~25~~¹³th day of ~~June~~^{February}, ~~2014~~²⁰¹⁵.

NATIONAL FOOTBALL LEAGUE, NFL PROPERTIES LLC

By: _____
Jeffrey Pash
NFL Executive Vice President

COUNSEL FOR THE NFL PARTIES

By: _____
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
Brad S. Karp
Theodore V. Wells, Jr.
Bruce Birenboim
Beth A. Wilkinson
Lynn B. Bayard

CO-LEAD CLASS COUNSEL

By: _____
SEEGER WEISS LLP
Christopher A. Seeger

By: _____
ANAPOL SCHWARTZ
Sol Weiss

CLASS COUNSEL

By: _____
PODHURST ORSECK, P.A.
Steven C. Marks

By: _____
LOCKS LAW FIRM
Gene Locks

SUBCLASS COUNSEL

By: _____
LEVIN, FISHBEIN, SEDRAN &
BERMAN
Arnold Levin

By: _____
NASTLAW LLC
Dianne M. Nast

EXHIBIT B-1

INJURY DEFINITIONS

DIAGNOSIS FOR BAP SUPPLEMENTAL BENEFITS

Level 1 Neurocognitive Impairment

(a) For Retired NFL Football Players diagnosed through the BAP, a diagnosis of Level 1 Neurocognitive Impairment must meet the criteria set forth in subsections (i)-(iv) below:

(i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a decline in cognitive function.

(ii) Evidence of moderate cognitive decline from a previous level of performance, as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement, in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial), provided one of the cognitive domains is (a) executive function, (b) learning and memory, or (c) complex attention.

(iii) The Retired NFL Football Player exhibits functional impairment generally consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating scale Category 0.5 (Questionable) in the areas of Community Affairs, Home & Hobbies, and Personal Care.

(iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.

(b) Level 1 Neurocognitive Impairment, for the purposes of this Settlement Agreement, may only be diagnosed by Qualified BAP Providers during a BAP baseline assessment examination, with agreement on the diagnosis by the Qualified BAP Providers.

QUALIFYING DIAGNOSES FOR MONETARY AWARDS

1. Level 1.5 Neurocognitive Impairment

(a) For Retired NFL Football Players diagnosed through the BAP, a diagnosis of Level 1.5 Neurocognitive Impairment must meet the criteria set forth in subsections (i)-(iv) below:

(i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a severe decline in cognitive function.

(ii) Evidence of a moderate to severe cognitive decline from a previous level of performance, as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement, in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial), provided one of the cognitive domains is (a) executive function, (b) learning and memory, or (c) complex attention.

(iii) The Retired NFL Football Player exhibits functional impairment generally consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating (CDR) scale Category 1.0 (Mild) in the areas of Community Affairs, Home & Hobbies, and Personal Care. Such functional impairment shall be corroborated by documentary evidence (*e.g.*, medical records, employment records), the sufficiency of which will be determined by the physician making the Qualifying Diagnosis. In the event that no documentary evidence of functional impairment exists or is available, then (a) there must be evidence of moderate to severe cognitive decline from a previous level of performance, as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement, in the executive function cognitive domain or the learning and memory cognitive domain, and at least one other cognitive domain; and (b) the Retired NFL Football Player's functional impairment, as described above, must be corroborated by a third-party sworn affidavit from a person familiar with the Retired NFL Football Player's condition (other than the player or his family members), the sufficiency of which will be determined by the physician making the Qualifying Diagnosis.

(iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.

(b) For living Retired NFL Football Players diagnosed outside of the BAP, a diagnosis while living of Level 1.5 Neurocognitive Impairment, *i.e.*, early dementia, based on evaluation and evidence generally consistent with the diagnostic criteria set forth in subsection 1(a)(i)-(iv) above, made by a Qualified MAF Physician or a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, as set forth and provided in Sections 6.3(b)-(d) of the Settlement Agreement.

(c) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis of Level 1.5 Neurocognitive Impairment, *i.e.*, early dementia, based on evaluation and evidence generally consistent with the diagnostic criteria set forth in subsection 1(a)(i)-(iv)

above, made while the Retired NFL Football Player was living by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology or neurocognitive disorders, as set forth and provided in Sections 6.3(c)-(e) of the Settlement Agreement.

2. Level 2 Neurocognitive Impairment

(a) For Retired NFL Football Players diagnosed through the BAP, a diagnosis of Level 2 Neurocognitive Impairment must meet the criteria set forth in subsections (i)-(iv) below:

(i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a severe decline in cognitive function.

(ii) Evidence of a severe cognitive decline from a previous level of performance, as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement, in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial), provided one of the cognitive domains is (a) executive function, (b) learning and memory, or (c) complex attention.

(iii) The Retired NFL Football Player exhibits functional impairment generally consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating (CDR) scale Category 2.0 (Moderate) in the areas of Community Affairs, Home & Hobbies, and Personal Care. Such functional impairment shall be corroborated by documentary evidence (*e.g.*, medical records, employment records), the sufficiency of which will be determined by the physician making the Qualifying Diagnosis. In the event that no documentary evidence of functional impairment exists or is available, then (a) there must be evidence of severe cognitive decline from a previous level of performance, as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement, in the executive function cognitive domain or the learning and memory cognitive domain, and at least one other cognitive domain; and (b) the Retired NFL Football Player's functional impairment, as described above, must be corroborated by a third-party sworn affidavit from a person familiar with the Retired NFL Football Player's condition (other than the player or his family members), the sufficiency of which will be determined by the physician making the Qualifying Diagnosis.

(iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.

(b) For living Retired NFL Football Players diagnosed outside of the BAP, a diagnosis while living of Level 2 Neurocognitive Impairment, *i.e.*, moderate dementia, based on evaluation and evidence generally consistent with the diagnostic criteria set forth in subsection 2(a)(i)-(iv) above, unless the diagnosing physician can certify in the Diagnosing Physician Certification that certain testing in 2(a)(i)-(iv) is medically unnecessary because the Retired NFL Football Player's dementia is so severe, made by a Qualified MAF Physician or a board-certified

or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, as set forth and provided in Sections 6.3(b)-(d) of the Settlement Agreement.

(c) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis of Level 2 Neurocognitive Impairment, *i.e.*, moderate dementia, based on evaluation and evidence generally consistent with the diagnostic criteria set forth in subsection 2(a)(i)-(iv) above, unless the diagnosing physician can certify in the Diagnosing Physician Certification that certain testing in 2(a)(i)-(iv) was medically unnecessary because the Retired NFL Football Player's dementia was so severe, made while the Retired NFL Football Player was living by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology or neurocognitive disorders, as set forth and provided in Sections 6.3(c)-(e) of the Settlement Agreement.

3. Alzheimer's Disease

(a) For living Retired NFL Football Players, a diagnosis while living of the specific disease of Alzheimer's Disease as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9), the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10), or a diagnosis of Major Neurocognitive Disorder due to probable Alzheimer's Disease as defined in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), made by a Qualified MAF Physician or a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, as set forth and provided in Sections 6.3(b)-(d) of the Settlement Agreement.

(b) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis of Major Neurocognitive Disorder due to probable Alzheimer's Disease consistent with the definition in *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), or a diagnosis of Alzheimer's Disease, made while the Retired NFL Football Player was living by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology to make such a diagnosis, as set forth and provided in Sections 6.3(c)-(e) of the Settlement Agreement.

4. Parkinson's Disease

(a) For living Retired NFL Football Players, a diagnosis while living of the specific disease of Parkinson's Disease as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9), the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10), or a diagnosis of Major Neurocognitive Disorder probably due to Parkinson's Disease as defined in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), made by a Qualified MAF Physician or a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, as set forth and provided in Sections 6.3(b)-(d) of the Settlement Agreement.

(b) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis of Parkinson's Disease, made while the Retired NFL Football Player was living by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist

physician, or by a physician with sufficient qualifications in the field of neurology to make such a diagnosis, as set forth and provided in Sections 6.3(c)-(e) of the Settlement Agreement.

5. **Death with Chronic Traumatic Encephalopathy (CTE)**

For Retired NFL Football Players who died prior to the ~~date of the Preliminary~~ Final Approval ~~and Class Certification Order~~ Date, a post-mortem diagnosis of CTE made by a board-certified neuropathologist prior to the Final Approval Date, provided that a Retired NFL Football Player who died between July 7, 2014 and the Final Approval Date shall have until 270 days from his date of death to obtain such a post-mortem diagnosis.

6. **Amyotrophic Lateral Sclerosis (ALS)**

(a) For living Retired NFL Football Players, a diagnosis while living of the specific disease of Amyotrophic Lateral Sclerosis, also known as Lou Gehrig's Disease ("ALS"), as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9) or the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10), made by a Qualified MAF Physician or a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, as set forth and provided in Sections 6.3(b)-(d) of the Settlement Agreement.

(b) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis of ALS, made while the Retired NFL Football Player was living by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology to make such a diagnosis, as set forth and provided in Sections 6.3(c)-(e) of the Settlement Agreement.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN OF PENNSYLVANIA**

**IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
LITIGATION**

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No. 12-md-2323 (AB)

MDL No. 2323

**THIS DOCUMENT RELATES TO:
ALL ACTIONS**

**ARMSTRONG OBJECTORS' SUPPLEMENTAL OBJECTION TO THE AMENDED
CLASS ACTION SETTLEMENT**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Settlement Class Members Ramon Armstrong, Nathaniel Newton, Jr., Larry Brown, Kenneth Davis, Michael McGruder, Clifton L. Odom, George Teague, Drew Coleman, Dennis DeVaughn, Alvin Harper, Ernest Jones, Michael Kiselak, Jeremy Loyd, Gary Wayne Lewis, Lorenzo Lynch, Hurles Scales, Gregory Evans, David Mims, Evan Ogelsby, Phillip E. Epps, Charles L. Haley, Sr., Kevin Rey Smith, Darryl Gerard Lewis, Curtis Bernard Wilson, Kelvin Mack Edwards, Sr., Dwayne Levels, Solomon Page, Tim McKyer, Larry Barnes, Mary Hughes, and Barbara Scheer (collectively, the "Armstrong Objectors") file this Supplemental Objection to the Class Action Settlement (Doc. #6087), as amended by the amendments in Class Counsel's and the NFL Parties' Joint Submission in Response to the Court's February 2, 2015 Order (Doc. #6481). The Armstrong Objectors respectfully state the following:

1. In their original Objection (Doc. #6353) (submitted *in camera* on September 3, 2014 and later filed by the Court) and Amended Objection (Doc. #6233), the Armstrong Objectors articulate sixteen detailed, multi-part objections to the class action settlement, as well as concrete proposals for curing the defects—none of which are meaningfully addressed by Class

Counsel's and the NFL Parties' recent settlement amendments. As a threshold matter, therefore, the Armstrong Objectors incorporate all of their previously stated objections, by reference, and reiterate them here as to the amended class action settlement in its current form. The recent amendments (Doc. #6481) are limited in scope and cosmetic at best. The resolution of thousands of unique, individual head injury claims does not fit within the "one size fits all" class action settlement framework proposed by Class Counsel and the NFL Parties.

2. Class Counsel and the NFL Parties had an opportunity to go above and beyond the Court's directive, seriously consider the substantive objections lodged by the Armstrong Objectors, cure the numerous significant defects in the settlement, and re-structure the settlement to provide meaningful relief to thousands of suffering former players and their families. The only relief granted by the amendments, however, is for the benefit of the NFL Parties; they are further relieved of any obligation to provide substantive relief to former players and their families. By its February 2, 2015 Order (Dox. #6479), the Court gave Class Counsel and the NFL Parties an extra down at the goal line. Unfortunately, they fumbled the ball.

3. For example, the Armstrong Objectors objected to several aspects of the Death with CTE provisions in the settlement. *See, e.g.*, Doc. #6233. Notwithstanding the new amendments, the Death with CTE provisions remain severely limited. While expanding the covered deaths to those occurring between the preliminary approval and final approval dates, and extending the deadline to secure the necessary post-mortem diagnosis until 270 days after the date of death, are steps in the right direction, in truth, there should be no deadline for Death with CTE benefits since death is one of the elements of the claim. The amended class action settlement does not assign similar deadlines to former players diagnosed with ALS, Alzheimer's or Parkinson's. Why is CTE singled out and treated differently? There is no credible answer to

this question. If there must be a deadline to qualify for Death with CTE benefits, it should be pegged to a former player's date of death—to wit, 270 days from the date of death or 270 days from the date the final approval order becomes final and non-appealable, whichever is later.

4. The Armstrong Objectors also objected to the Death with CTE provisions on other grounds (*see* Doc. #6233)—none of which are addressed by the recent amendments. The Armstrong Objectors, therefore, incorporate all of their “Death with CTE” objections, by reference, and reiterate them here.

5. The Armstrong Objectors also objected to several aspects of the “Baseline Assessment Program” (BAP). *See, e.g.*, Doc. #6233. Notwithstanding the new BAP amendment—that every eligible former player will be entitled to a baseline assessment examination regardless of the funds available under the BAP—the BAP essentially remains unchanged. Since Class Counsel and the NFL Parties did not address the Armstrong Objectors’ BAP objections in any meaningful way, the Armstrong Objectors incorporate all of their BAP objections, by reference, and reiterate them here.

6. The Armstrong Objectors also objected to several aspects of the appeals procedure. *See, e.g.*, Doc. #6233. Notwithstanding the new amendment waiving the \$1000 adverse decision appellate fee in hardship cases, the appeals process remains flawed. Simply stated, requiring a \$1000 appellate fee for any reason is mean spirited. This paltry amount of money will not come close to defraying the actual cost of an appeal. It is nothing more than a barrier to entry. There should be no appellate fee of any kind for any reason at any time. *See* Doc. #6233. Since Class Counsel and the NFL Parties did not address the Armstrong Objectors’

objections to the appeal procedures in any meaningful way, the Armstrong Objectors incorporate all of their appeal procedures objections, by reference, and reiterate them here.¹

WHEREFORE, the Armstrong Objectors respectfully request that the Court enter an order (i) denying final approval of the settlement embodied in the June 25, 2014 Class Action Settlement Agreement (Doc. #6087), as amended by the amendments set forth in Class Counsel's and the NFL Parties' Joint Submission in Response to the Court's February 2, 2015 Order (Doc. #6481), (ii) recommending that Class Counsel and the NFL Parties revise the class action settlement to cure the defects identified in the Armstrong Objectors' objections, and (iii) granting all other appropriate relief to the Armstrong Objectors and Settlement Class Members.

Date: April 13, 2015

Respectfully submitted,

/s/ Richard L. Coffman

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¹ The other two amendments in Class Counsel's and the NFL Parties' Joint Submission (Doc. #6481) (*i.e.*, credit for time played in the World League of American Football, NFL Europe League, and NFL Europa League *and* waiver of the necessity of medical records when they are unavailable because of a *force majeure*-type event) do not pertain to any of the Armstrong Objectors' objections; the Armstrong Objectors do not take a position on them here.

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COUNSEL FOR THE ARMSTRONG OBJECTORS

CERTIFICATE OF SERVICE

I certify that a true copy of the Armstrong Objectors' Supplemental Objection to the Amended Class Action Settlement was served on all counsel of record, via the Court's ECF system, on April 13, 2015.

/s/ Richard L. Coffman
Richard L. Coffman

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

Hon. Anita B. Brody

ALL ACTIONS

ORDER

AND NOW, this 21st day of April, 2015, it is **ORDERED** as follows:

The following motions are **GRANTED**:

- ECF No. 6120
- ECF No. 6130
- ECF No. 6133
- ECF No. 6134
- ECF No. 6135
- ECF No. 6138
- ECF No. 6170
- ECF No. 6171
- ECF No. 6214
- ECF No. 6215
- ECF No. 6216
- ECF No. 6231
- ECF No. 6236
- ECF No. 6327
- ECF No. 6451

The following motions are **GRANTED IN PART AND DENIED IN PART**:

- ECF No. 6180. The Brain Injury Association of America's request to file an *amicus curiae* brief is **DENIED**. However, the Brain Injury Association of America's Declaration of Drs. Brent E. Masel and Gregory J. O'Shanick (ECF No. 6180-2) is accepted and added to the record.

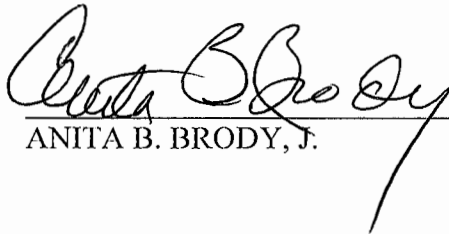
The following motions are **DENIED AS MOOT**:

- ECF No. 6151 (in light of ECF No. 6245)
- ECF No. 6163 (in light of ECF No. 6246)
- ECF No. 6164 (in light of ECF No. 6171)

- ECF No. 6192 (in light of ECF No. 6204)
- ECF No. 6211 (in light of ECF No. 6245)
- ECF No. 6244
- ECF No. 6249
- ECF No. 6260 (in light of ECF No. 6426)
- ECF No. 6331 (in light of ECF No. 6334)
- ECF No. 6338 (in light of ECF No. 6415)

The following motions are **DENIED**:

- ECF No. 6252
- ECF No. 6259
- ECF No. 6427
- ECF No. 6429
- ECF No. 6430
- ECF No. 6461
- ECF No. 6462


ANITA B. BRODY, J.

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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

| | |
|---|--------------------------------------|
| IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION | No. 2:12-md-02323-AB MDL No. 2323 |
| THIS DOCUMENT RELATES TO: ALL ACTIONS | Hon. Anita B. Brody |

April 22, 2015

Anita B. Brody, J.

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MEMORANDUM

Plaintiffs Kevin Turner and Shawn Wooden, through their Co-Lead Class Counsel, Class Counsel, and Subclass Counsel, and Defendants National Football League (“NFL”) and NFL Properties LLC (collectively, the “NFL Parties”) have negotiated and agreed to a Class Action Settlement (the “Settlement”) that will resolve all claims against the NFL Parties in this multidistrict litigation.

On November 12, 2014, Class Plaintiffs moved for class certification and final approval of the Settlement.¹ Pursuant to Federal Rule of Civil Procedure 23, I certify the Settlement Class and Subclasses, find that the Settlement is fair, reasonable, and adequate, and approve the Settlement in its entirety. Therefore, I will grant the motion for class certification and final approval of the Settlement.

I. Background and Procedural History

A. Initial Lawsuits and Consolidation

On July 19, 2011, 73 former professional football players filed suit in the Superior Court of California, Los Angeles County, against the NFL Parties. *See* Compl., *Maxwell v. Nat’l Football League*, No. BC465842 (Cal. Super. Ct. July 19, 2011). They alleged that the NFL Parties failed to take reasonable actions to protect players from the chronic risks created by concussive and sub-concussive head injuries and fraudulently concealed those risks from players. Three substantially similar lawsuits followed in quick succession. *See* Compl., *Pear v. Nat’l Football League*, No. LC094453 (Cal. Super. Ct. Aug. 3, 2011); Compl., *Barnes v. Nat’l Football League*, No. BV468483 (Cal. Super. Ct. Aug. 26, 2011); *see also* *Easterling v. Nat’l Football League*,

¹ The Settlement was initially filed on June 25, 2014, and amended on February 13, 2015. *See* Parties’ Joint Amendment, Ex. A. As used in this Memorandum, the term Settlement refers to the amended version, except when the history of the initial filing is discussed.

No. 11-5209, ECF No. 1 (E.D. Pa. Aug. 17, 2011). In response, the Judicial Panel on Multidistrict Litigation consolidated these cases before this Court as a multidistrict litigation (“MDL”), pursuant to 28 U.S.C. § 1407. *See* MDL Panel Transfer Order, ECF No. 1.

Since consolidation, about 5,000 players (“MDL Plaintiffs”) have filed over 300 substantially similar lawsuits against the NFL Parties,² all of which have been transferred to this Court. To effectively manage these actions, I appointed Christopher Seeger and Sol Weiss as Co-Lead Class Counsel, and appointed individuals to a Plaintiffs’ Executive Committee and a Steering Committee. *See* Case Mgmt. Order No. 2 at 1-2, ECF No. 64; Case Mgmt. Order No. 3 at 1, ECF No. 72 (appointing Sol Weiss as additional Co-Lead Class Counsel and appointing additional members of the Steering Committee). I ordered Co-Lead Class Counsel to submit both a Master Administrative Long-Form Complaint and a Master Administrative Class Action Complaint, which were filed on June 7, 2012. *See* Case Mgmt. Order No. 4 at 1-3, ECF No. 98. Subsequently, Co-Lead Class Counsel filed an Amended Master Administrative Long-Form Complaint. This Amended Complaint, along with the Master Administrative Class Action Complaint (collectively, the “Complaints”), became the operative pleadings of this MDL. *See* Master Administrative Class Action Compl., ECF No. 84; Am. Master Administrative Long-Form Compl., ECF No. 2642 (“Am. MAC”).

In the Complaints, MDL Plaintiffs allege that the NFL Parties had a “duty to provide players with rules and information that protect [players] as much as possible from short-term and long-

² Many MDL Plaintiffs also brought suit against Riddell, Inc., All American Sports Corporation, Riddell Sports Group, Inc., Easton-Bell Sports Inc., Easton-Bell Sports, LLC, EB Sports Corp., and RBG Holdings Corp. (collectively, the “Riddell Defendants”). The Judicial Panel on Multidistrict Litigation also transferred claims against the Riddell Defendants into this MDL. The Riddell Defendants, however, are not parties to the Settlement.

term health risks,” including from the risks of repetitive mild traumatic brain injury (“TBI”).³ Am. MAC ¶ 6, 8. They claim “the NFL held itself out as the guardian and authority on the issue of player safety,” yet failed to properly investigate, warn of, and revise league rules to minimize the risk of concussive and sub-concussive hits in NFL Football games. *See id.* ¶¶ 6, 43, 86. MDL Plaintiffs allege that the NFL Parties fostered a culture surrounding football that glorified violence and a gladiator mentality, encouraging NFL players to play despite head injuries.

MDL Plaintiffs also allege that, as concern about head injuries in contact sports grew in the medical community, “the NFL voluntarily inserted itself into the private and public discussion” regarding these dangers. *Id.* ¶ 150. In 1994, the NFL Parties created a Mild Traumatic Brain Injury Committee (“MTBI Committee”) to study the effects of concussive and sub-concussive injuries on their players. Through the MTBI Committee, the NFL Parties allegedly obfuscated the connection between NFL Football and long-term brain injury, despite knowing “for decades” that such a connection exists. *Id.* ¶¶ 108, 243. The MTBI Committee also allegedly pressured those who criticized its conclusions to retract or otherwise distance themselves from their findings. MDL Plaintiffs claim that, “[b]efore June of 2010, the NFL made material misrepresentations to its players, former players, the United States Congress, and the public at large that there was no scientifically proven link between repetitive traumatic head impacts and later-in-life cognitive/brain injury.” *Id.* ¶ 308.

MDL Plaintiffs allege that head injuries lead to a host of debilitating conditions, including Alzheimer’s Disease, dementia, depression, deficits in cognitive functioning, reduced processing speed, attention and reasoning, loss of memory, sleeplessness, mood swings, and personality

³ The scientific community recognizes three categories of TBI: mild, moderate, and severe. *See* Decl. of Dr. Kristine Yaffe ¶ 41, ECF No. 6422-36. NFL Football allegedly puts players at risk of repetitive mild TBI, including concussions. Am. MAC. ¶ 2; Decl. of Dr. Christopher Giza ¶ 12, ECF No. 6423-18 (noting “concussion overlaps significantly” with mild TBI).

changes. MDL Plaintiffs also allege that the repetitive head trauma sustained while playing football causes a gradual build-up of tau protein in the brain, resulting in Chronic Traumatic Encephalopathy (“CTE”). CTE allegedly causes an increased risk of suicide, and many symptoms often associated with Alzheimer’s Disease and dementia, as well as with mood disorders such as depression and loss of emotional control.

The Complaints assert fourteen claims against the NFL Parties, which can be generally grouped into negligence claims and fraud claims.⁴ MDL Plaintiffs seek declaratory relief, medical monitoring, and damages. *See* Am. MAC at Prayer for Relief.

B. Motions to Dismiss Based on Preemption

Before allowing the litigation to proceed to its merits, I determined that a significant threshold legal issue had to be addressed: whether MDL Plaintiffs’ negligence and fraud claims are preempted by the Collective Bargaining Agreements (“CBAs”) between the Retired Players and the 32 Member Clubs that make up the National Football League. I was aware that in a number of analogous cases, courts ruled that state law claims brought against the NFL and associated parties implicated provisions of the CBAs. Accordingly, § 301 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. 185(a), preempted those state law claims. A preemption ruling in this MDL would necessarily require MDL Plaintiffs to resolve their claims through arbitration rather than in federal court because the CBAs contain mandatory arbitration provisions. Because of the importance of this issue, I stayed discovery and granted the request of the NFL Parties to file motions to dismiss on the preemption argument only. *See* Case Mgmt. Order No. 2 at 2 (noting that preemption was to be considered on an expedited basis); Case

⁴ Specifically, the Complaints assert claims against the NFL Parties for declaratory relief, medical monitoring, wrongful death and survival actions, fraudulent concealment, fraud, negligent misrepresentation, negligence (three separate counts), loss of consortium, negligent hiring, negligent retention, and civil conspiracy. Am MAC. ¶¶ 246-382, 422-25, Prayer for Relief.

Mgmt. Order No. 4 at 3-4; Tr. of Organizational Courtroom Conference, Apr. 25, 2012 at 28:14-16 (staying discovery); Order, Aug. 21, 2012, ECF No. 3384.

On August 30, 2012, the NFL Parties moved to dismiss both Complaints. *See* Defs.’ Mot. to Dismiss Am. MAC, ECF No. 3589; Defs.’ Mot. to Dismiss Master Administrative Class Action Complaint, ECF No. 3590. The NFL Parties argue that MDL Plaintiffs’ claims necessarily implicate provisions of the CBAs that address player safety. Specifically, they argue that the CBAs control or implicate the duties of the NFL Parties and individual Member Clubs to treat player injuries, make return-to-play decisions, inform players of medical risks associated with continuing to play, and promulgate rule changes to enhance player safety. *See* Mot. to Dismiss Am. MAC at 12-18. If the NFL Parties are correct, then § 301 of the LMRA requires MDL Plaintiffs to arbitrate their claims because they agreed in the CBAs to resolve their disputes before an arbitrator, not in federal court.

The parties completed briefing on the motions to dismiss on January 28, 2013, and I heard oral argument on April 9, 2013. The NFL Parties’ motions to dismiss remain pending.

C. Settlement Negotiations and Preliminary Approval

On July 8, 2013, I ordered the Parties to participate in mediation with the hope that a negotiated, mutually beneficial settlement could be reached. Pending their negotiations, I agreed to withhold my ruling on the motions to dismiss that might have sent the litigation to arbitration. *See* Order, July 8, 2013, ECF No. 5128. I appointed retired United States District Court Judge Layn Phillips as mediator to help the Parties explore settlement. *Id.*

A genuine dialogue between zealous and well-prepared adversaries transpired. Judge Phillips reports that the Parties engaged in “arm’s-length, hard-fought negotiations.” Decl. of Layn R. Phillips ¶ 5, ECF No. 6073-4 (“Phillips Decl.”). During this time, the Parties met for

more than “twelve full days” of formal mediation. *See id.* ¶¶ 5-6; Decl. of Christopher Seeger ¶ 31, ECF No. 6423-3 (“Seeger Decl.”). “The negotiations were intense, vigorous, and sometimes quite contentious.” Supplemental Decl. of Layn R. Phillips ¶ 4, ECF No. 6423-6 (“Phillips Supp. Decl.”).

The Parties came prepared for these discussions. The Parties had already retained well-qualified medical experts to help determine the merits of the case. These experts advised the Parties on difficult questions such as the type of head trauma associated with NFL Football and the long term health effects of trauma on Retired Players. *See* Phillips Decl. ¶ 8; Seeger Decl. ¶ 32; Decl. of Arnold Levin ¶¶ 14-15, ECF No. 6423-10 (“Levin Decl.”); Decl. of Dianne Nast ¶¶ 13-14 (“Nast Decl.”); Decl. of Dr. Scott Millis ¶ 11, ECF No. 6422-34 (noting he “assisted the NFL Parties during their negotiations” regarding the Test Battery and other Settlement provisions) (“Dr. Millis Decl.”); Decl. of Dr. John Kelip ¶ 16, ECF No. 6423-20 (noting he has consulted with Class Counsel on scientific issues since the summer of 2013) (“Dr. Kelip Decl.”). Judge Phillips met with the Parties’ experts and observed the valuable services they provided. *See* Phillips Decl. ¶8.

In addition to experts, the Parties had access to considerable information about the Retired Players, including from the short form complaints filed with the Court. The NFL Parties’ records provided the Parties with biographical information about the vast majority of the former players, including the number of seasons played. *See* Material Provided by Counsel to Pls., Report of the Analysis Research Planning Corp. to Special Master Perry Golkin at 13-15, ECF No. 6167 (“Class Counsel’s Actuarial Materials”); Material Provided by Counsel to the NFL, Report of the Segal Group to Special Master Perry Golkin ¶ 16, ECF No. 6168 (“NFL Parties’ Actuarial Materials”). Co-Lead Class Counsel also created and maintained a comprehensive

database of the symptoms of MDL Plaintiffs. As a result, the Parties had information about the current cognitive impairment of over 1,500 Retired Players. *See* NFL Parties' Actuarial Materials ¶ 16; Seeger Decl. ¶ 20.

The mediation efforts were successful. On August 29, 2013, after two months of near continuous negotiations, the Parties signed a term sheet setting forth the "principal terms of a settlement." *See* Order, Aug. 29, 2013, ECF No. 5235. The term sheet included \$765 million to fund medical exams and provide compensation for player injuries. *Id.* Given the Parties' progress in reaching a settlement, I continued to withhold decision on the NFL Parties' motions to dismiss on preemption grounds. *Id.*

The Parties negotiated further, and over the next four months established the specific terms of the Settlement. On January 6, 2014, Class Counsel,⁵ with Kevin Turner and Shawn Wooden as Class Representatives, filed the complaint in *Turner v. Nat'l Football League*, No. 14-0029, ECF No. 1 (E.D. Pa. Jan. 6, 2014) (the "Class Action Complaint").⁶ In that action, Class Counsel sought preliminary class certification and preliminary approval of their proposed settlement. *See* Mot. for Prelim Approval, Jan. 6, 2014, ECF No. 5634.

Though I commended the Parties for their efforts, I denied the motion for preliminary class certification and preliminary approval of the Settlement without prejudice. *See* Order Den. Mot. for Prelim. Approval, ECF No. 5658. I was primarily concerned that the capped fund would exhaust before the 65-year life of the Settlement; I feared that "not all Retired Players who ultimately receive[d] a Qualifying Diagnosis or their related claimants will be paid." Mem. Op.

⁵ Class Counsel includes Co-Lead Class Counsel Christopher Seeger and Sol Weiss, Subclass Counsel Arnold Levin and Dianne Nast, as well as Gene Locks and Steven Marks. *See* Settlement § 2.1(r).

⁶ *Turner* was originally marked as a related action to this MDL. On June 25, 2014, "in the interest of justice and to promote judicial economy and avoid duplication," I ordered that "[a]ll motion practice and other filings related to or based on *Turner v. NFL*, shall be filed only on [this] MDL docket . . ." *Turner*, ECF No. 20.

at 10, ECF No. 5657. I was also concerned that the deal released claims against the National College Athletic Association (“NCAA”) and other collegiate, amateur, and youth football organizations. *Id.* at 10 n.6. To address my concerns, I ordered the Parties to share the actuarial data and analyses performed by their economic experts⁷ with Special Master Perry Golkin.⁸

Five more months of arm’s-length, hard fought negotiations followed. Special Master Golkin oversaw these negotiations, during which the Parties revisited many provisions of the Settlement. *See* Seeger Decl. ¶ 61.

These negotiations proved fruitful. The Parties ultimately reached a revised settlement. The revised deal retained the same basic structure as the original, and included large maximum awards for Qualifying Diagnoses subject to a series of offsets, a separate fund to allow for baseline assessment examinations for Retired Players, and a fund dedicated to educating former players and promoting safety and injury prevention for football players of all ages. Crucially, this revised deal uncapped the fund to compensate Retired Players with Qualifying Diagnoses; the NFL Parties agreed to pay all valid claims over the duration of the settlement regardless of the total cost. The NFL Parties also agreed to narrow the scope of the Releases. In exchange for these concessions, the NFL Parties received heightened anti-fraud provisions to ensure that funds were only disbursed to deserving claimants. On June 25, 2014, Class Counsel filed a motion for preliminary class certification and preliminary approval of the Settlement. *See* Mot. for Prelim. Approval, June 25, 2014, ECF No. 6073.

⁷ The Parties have since disclosed this information, and it is publicly available. *See* Class Counsel’s Actuarial Materials; NFL Parties’ Actuarial Materials.

⁸ I appointed Special Master Golkin on December 16, 2013 in light of the “expected financial complexity of the proposed settlement.” *See* Order Appointing Special Master at 1, ECF No. 5607. As always, I am grateful to Mr. Golkin for his forthright and astute advice.

On July 7, 2014 (“Preliminary Approval Date”), after making a preliminary determination on class certification for the purpose of issuing notice of settlement,⁹ I granted the motion for preliminary class certification and preliminary approval of the Settlement. *See* Order Granting Prelim. Approval, ECF No. 6084. As discussed more fully *infra* Section I.E, on February 13, 2015, the Parties amended the Settlement, making it more favorable to the Class. *See* Parties’ Joint Amendment, ECF No. 6481.

D. The Settlement

The Class consists of “[a]ll living NFL Football Players who, prior to the date of Preliminary Approval . . . retired . . . from playing professional football with the NFL,” as well as their Representative and Derivative Claimants. *See* Settlement §§ 1.1, 2.1(ffff). Representative Claimants are those duly authorized by law to assert the claims of deceased, legally incapacitated, or incompetent Retired Players. *See id.* § 2.1(eeee). Derivative Claimants are those, such as parents, spouses, or dependent children, who have some legal right to the income of Retired Players. *See id.* § 2.1(ee).

The Settlement sorts Class Members into one of two subclasses based on Retired Players’ injuries as of the Preliminary Approval Date. Subclass 2 consists of:

Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a postmortem diagnosis of CTE.

Id. § 1.2(b).

⁹ Despite language in the Preliminary Approval Order and accompanying Memorandum that the Class had been “conditionally” certified, I reserved class certification analysis until after the Fairness Hearing to allow for full development of the record. *See In re Nat’l Football Players Concussion Injury Litig.*, 775 F.3d 570, 584-87 (3d Cir. 2014).

Subclass 1 consists of the remainder:

Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants.

Id. § 1.2(a).

The Settlement has three primary components. An uncapped Monetary Award Fund (“MAF”), overseen by a Claims Administrator, provides compensation for Retired Players who submit sufficient proof of Qualifying Diagnoses. A \$75 million Baseline Assessment Program (“BAP”) provides eligible Retired Players¹⁰ with free baseline assessment examinations of their objective neurological functioning. BAP funds will also be used to provide BAP Supplemental Benefits, including counseling and prescription drug benefits, to those who are impaired but have not deteriorated to the point of receiving a Qualifying Diagnosis. Third, an Education Fund will educate Class Members regarding the NFL Parties’ existing CBA Medical and Disability Benefits programs, and promote safety and injury prevention for football players of all ages, including youth football players. I will appoint Wendell Pritchett and Jo-Ann Verrier jointly as Special Master responsible for overseeing, implementing, and administering the entire Settlement. *See id.* § 10.1.

¹⁰ Only Retired Players may receive Qualifying Diagnoses or baseline assessment examinations because they are the only Class Members who played NFL Football. Because Representative Claimants assume the legal rights of the Retired Players they represent, the Settlement treats them similarly to Retired Players for the purposes of calculating, submitting, and receiving Monetary Awards.

Derivative Claimants are Class Members because of their relationship with a Retired Player, not because they stand in the shoes of a Retired Player. As a result, the Derivative Claimant Awards work somewhat differently. Derivative Claimants are eligible to receive up to 1% of a Retired Player's Monetary Award. Unlike a Representative Claimant, a Derivative Claimant must wait until a Retired Player files for a Monetary Award, and then file a Derivative Claim Package seeking a portion of that Award. *See* Settlement § 7.2. In most other respects, Derivative Claimants are treated similarly to Representative Claimants.

Because a Retired Player is essential to every claim, for ease of reference I generally describe the requirements Retired Players must satisfy to receive benefits of the Settlement.

i. Monetary Award Fund

The Monetary Award Fund is an uncapped, inflation-adjusted fund that provides cash awards for Retired Players who receive Qualifying Diagnoses. By cost, the MAF constitutes the majority of the Settlement.¹¹

The Settlement creates six Qualifying Diagnoses: Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, Alzheimer’s Disease, Parkinson’s Disease, Amyotrophic Lateral Sclerosis (“ALS”), and Death with CTE.

Levels 1.5 and 2 Neurocognitive Impairment are defined by the Settlement. They require both a decline in cognitive function and a loss of functional capabilities, such as the ability to hold a job or perform household chores. *See generally id.* Ex. 1. These diagnoses correspond with commonly accepted clinical definitions of mild¹² and moderate dementia, respectively.¹³

The Settlement adopts the definitions of Alzheimer’s Disease, Parkinson’s Disease, and ALS found in the World Health Organization’s International Classification of Diseases. *Id.*

Diagnoses of Alzheimer’s Disease or Parkinson’s Disease may alternatively meet the definitions provided by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (“DSM-5”). *Id.* Death with CTE requires a post-mortem diagnosis of CTE made by a board-certified neuropathologist. *Id.*

After the Effective Date of the Settlement, only pre-approved Qualified MAF Physicians and Qualified BAP Providers may render Qualifying Diagnoses. *See id.* §§ 5.7(a)(i), 6.3(b), 6.5(a), Ex. 1. The Claims Administrator and BAP Administrator will select these specialists, subject to the written approval of Co-Lead Class Counsel and the NFL Parties. *See id.* §§ 5.7(a)(i), 6.5(a).

¹¹ The MAF accounted for roughly 90% of the original settlement. *See* Mem. Op. at 4-5, ECF No. 5657. Uncapped, this percentage may grow.

¹² As stated on the record at the Fairness Hearing, for the purposes of the Settlement, the terms mild dementia and early dementia are synonymous. *See* Am. Fairness Hr'g Tr. at 13:11-25, ECF No. 6463.

¹³ See *infra* Section V.B.i.

The Settlement will also honor Qualifying Diagnoses made before the Effective Date by appropriately credentialed medical professionals. *See id.* §§ 6.3(c)-6.3(e).

Both Qualified MAF Physicians and Qualified BAP Providers may render Qualifying Diagnoses of Levels 1.5 and 2 Neurocognitive Impairment, but only Qualified MAF Physicians may render Qualifying Diagnoses of Alzheimer's Disease, Parkinson's Disease, and ALS. *Id.* § 6.3(b). A Retired Player may only receive a Qualifying Diagnosis of Death with CTE if he died before the Final Approval Date of the Settlement. *Id.* Ex. 1.

A Qualifying Diagnosis entitles a Retired Player to a substantial maximum award, subject to mitigating offsets. The Settlement waives all causation requirements for Qualifying Diagnoses. A Retired Player is *not* required to show that playing in the NFL caused his injury or show actual damages. The maximum awards are as follows:

| Qualifying Diagnosis | Maximum Award |
|-------------------------------------|----------------------|
| Level 1.5 Neurocognitive Impairment | \$1.5 Million |
| Level 2 Neurocognitive Impairment | \$3 Million |
| Parkinson's Disease | \$3.5 Million |
| Alzheimer's Disease | \$3.5 Million |
| Death with CTE | \$4 Million |
| ALS | \$5 Million |

If a Retired Player's condition worsens to the point that he receives an additional Qualifying Diagnosis meriting a higher award, he is entitled to a Supplemental Monetary Award to make up the difference. *See id.* § 6.8.

A Retired Player's Monetary Award is subject to a series of incremental offsets. The older a Retired Player is at the time he receives a Qualifying Diagnosis, the smaller his award will be.¹⁴ *Id.* Ex. 3. A Retired Player who played fewer than five Eligible Seasons in the NFL will see his

¹⁴ *See infra* Section V.C.i.

award decreased as well.¹⁵ *See id.* § 6.7(b). A Retired Player who has not yet received a Qualifying Diagnosis will be subject to an offset if he fails to participate in the BAP.¹⁶ *See id.*

Some medical conditions also trigger more substantial offsets in Monetary Awards. A Retired Player who suffers a Stroke or a severe TBI outside of NFL Football will receive a significantly smaller award. *See id.*¹⁷ However, a Retired Player subject to these offsets will have the opportunity to challenge whether his Stroke or severe TBI is related to his Qualifying Diagnosis. *See id.* § 6.7(d).

Finally, any Monetary Award will be reduced by the extent necessary to satisfy any applicable and legally enforceable government liens. *See id.* § 11.3(c)(iv). Federal and state law allow the Medicare and Medicaid programs to recoup any health insurance payments made to an insured if a third party is found responsible for the underlying injury.¹⁸ Pursuant to the Settlement, a Lien Resolution Administrator will identify and resolve these liens and reimbursement claims on behalf of Class Members. *See id.* § 11.1. Class Members are already required by law to repay these obligations, but will likely do so at a discount because the Lien Resolution Administrator will be able to negotiate on a class-wide basis. *See* Aff. of Matthew Garretson ¶¶ 23-29, ECF No. 6423-4 (noting success of similar programs in the *Vioxx*, *Avandia*, *Zyprexa*, and *Deepwater Horizon* settlements) (“Garretson Aff.”). The lien resolution process represents a substantial benefit for Class Members.

Because the MAF is uncapped, every Class Member who timely registers and qualifies for a Monetary or Derivative Claimant Award will receive an award. Additionally, every eligible

¹⁵ *See infra* Section V.C.iv.

¹⁶ *See infra* Section V.C.v.

¹⁷ *See infra* Sections V.C.ii and V.C.iii.

¹⁸ Because significant penalties exist for noncompliance with these requirements, virtually all defendants in mass tort personal injury settlements, including the NFL Parties, require that liens be satisfied as a condition of any cash payout. *See* Affidavit of Matthew Garretson ¶ 23, ECF No. 6423-4.

Representative Claimant of a deceased Retired Player who died on or after January 1, 2006 will receive a Monetary Award. However, any eligible Representative Claimant of a deceased Retired Player who died prior to January 1, 2006 will receive a Monetary Award only if he can show that his wrongful death or survival claim would not be barred by the statute of limitations under applicable state law. *See* Settlement § 6.2(b).

ii. Claims Process

To collect from the MAF or participate in the BAP, a Class Member must register with the Claims Administrator within 180 days of receiving notice that the Settlement has been approved and is in effect. *See id.* §§ 4.2(c), 14.1(d). A Class Member must provide basic biographical and contact information and, in the case of a Representative or Derivative Claimant, identify the Retired Player whose injuries form the basis of the claim. *See id.* § 4.2(b). If a Class Member can demonstrate good cause, then he may receive an extension to the 180-day registration period. *See id.* § 4.2(c).

A Claim Package “must be submitted to the Claims Administrator no later than two (2) years after the date of the Qualifying Diagnosis or within two (2) years after the Settlement Class Supplemental Notice is posted on the Settlement Website, whichever is later.” *Id.* § 8.3(a)(i). Failure to comply with the applicable Claim Package submission deadline will preclude a Class Member from receiving an award, unless he can show substantial hardship. *See id.* The Claim Package must include a certification by the physician who diagnosed the Retired Player, medical records supporting that diagnosis, and proof that the Retired Player played in the NFL.¹⁹ *See id.* § 8.2(a). The Claims Administrator, after providing the Class Member with an opportunity to

¹⁹ If a Retired Player lacks these records, the NFL Parties have a good faith obligation to provide any records in their possession. *See id.* § 9.1(a).

examination.²⁰ Appropriately credentialed physicians selected by a court-appointed BAP Administrator will provide these examinations at no cost to Retired Players. *See id.* § 5.6(a)(i).

Baseline assessment examinations serve several functions. Exams may produce a Qualifying Diagnosis. Qualified BAP Providers may diagnose Retired Players with Level 1, 1.5, or 2 Neurocognitive Impairment; the latter two are Qualifying Diagnoses that entitle a Retired Player to a Monetary Award.²¹ *Id.* Ex. 1. The results of BAP examinations can also be compared with any future tests to determine whether a Retired Player’s cognitive abilities have deteriorated.

Finally, a baseline assessment examination may entitle a Retired Player to BAP Supplemental Benefits. Retired Players diagnosed with Level 1 Neurocognitive Impairment—evidencing some objective decline in cognitive function, but not yet rising to the level of early dementia—are eligible to receive medical benefits, including further testing, treatment, counseling, and pharmaceutical coverage. *See id.* §§ 5.2, 5.11, Ex. 1.

The BAP lasts for ten years. *Id.* § 5.5. Every eligible Retired Player age 43 or over must take a baseline assessment examination within two years of the BAP’s commencement. *Id.* § 5.3. Every eligible Retired Player younger than age 43 must do so before the end of the program or by his 45th birthday, whichever comes first. *Id.*

iv. **Education Fund**

The Education Fund is a \$10 million fund to promote safety and injury prevention for football players of all ages, including youth football players. The fund will also educate Retired Players about their NFL CBA Medical and Disability Benefits. Co-Lead Class Counsel and the

²⁰ For an in-depth discussion of the contents of a baseline assessment examination, see *infra* Section V.D.ii.

²¹ The BAP is not designed to test for Alzheimer’s Disease, Parkinson’s Disease, or ALS. Retired Players may not be diagnosed with these Qualifying Diagnoses during a baseline assessment examination.

NFL Parties, with input from Retired Players, will propose specific initiatives for the Court’s approval. *See id.* § 12.1.

v. **Releases of Claims**

In exchange for the benefits described above, Class Members release and dismiss with prejudice all claims and actions against the Released Parties “arising out of, or relating to, head, brain and/or cognitive injury, as well as any injuries arising out of, or relating to, concussions and/or sub-concussive events,” including claims relating to CTE. *Id.* Art. XVIII. Class Members also covenant not to sue the Released Parties. *Id.* All claims that “were, are or could have been asserted in the Class Action Complaint” are also released. *Id.*

Class Members, however, remain free to pursue a number of claims for their injuries even after the Settlement takes effect. Claims against the Riddell Defendants, who are not parties to this Settlement, remain pending. The Releases similarly have no effect on claims against the NCAA or other collegiate, amateur, or youth football organizations.

Additionally, the Releases do not compromise the benefits that Retired Players are entitled to under their CBAs with individual Member Clubs. These NFL CBA Medical and Disability Benefits provide significant additional compensation. For example, the “88 Plan” reimburses or pays for up to \$100,000 of medical expenses per year for qualifying Retired Players with dementia, ALS, and Parkinson’s Disease. *See* Decl. of Dennis Curran ¶¶ 5-7, ECF No. 6422-32 (“Curran Decl.”). Retired Players also retain access to a Neuro-Cognitive Disability Benefit, which provides compensation for those who have mild or moderate neurocognitive impairment. *See id.* ¶¶ 8-9. General retirement benefits, disability benefits, and health insurance programs are also left unaffected. *See id.* ¶¶ 11-17.

vi. Attorneys' Fees

During their initial negotiations, the Parties did not discuss fees until after the key terms of the Settlement—including the total size of the original capped fund—were publicly announced on the docket. *See* ECF No. 5235; Phillips Supp. Decl. ¶ 19.

The NFL Parties have agreed not to contest any award of attorneys' fees and costs equal to or below \$112.5 million. Any fee award will be separate from, and in addition to, the NFL Parties' other obligations under the Settlement. *See* Settlement § 21.1. Class Counsel have not yet moved for any fee award. I will determine an appropriate fee award at a later date.

The Settlement also provides that Co-Lead Class Counsel may petition the Court to set aside up to 5% of each Monetary and Derivative Claimant Award to administer the Settlement. This request is subject to court approval, and any petition must include the amount of any set aside and its proposed use. *Id.*

E. Reactions to the Settlement and Resulting Amendments

The order granting preliminary approval afforded Class Members 90 days to review the Settlement, object, and opt out. *See* Order Granting Prelim. Approval ¶ 4. Ultimately, 208 Class Members submitted requests to exclude themselves²² from the Settlement, and a total of 205 Objectors filed 83 written objections.²³ These figures each represent approximately one percent of Retired Players. *See* Class Counsel's Actuarial Materials at 13-14; NFL Parties' Actuarial Materials ¶ 16 (estimating over 20,000 Retired Players). Retired Players, as opposed to their Representative or Derivative Claimants, submitted the vast majority of the objections and opt-out

²² *See* Eighth Opt-Out Report of Claims Administrator ¶ 2, ECF No. 6507. As of the Fairness Hearing, there were 234 timely and untimely opt-out requests. Since then, 26 Class Members have revoked these requests and have been allowed back into the Settlement. *Compare id. with* First Opt-Out Report of Claims Administrator ¶ 3, ECF No. 6340.

²³ All objections are publicly available on this MDL's docket. A list of Objectors can be found at Appendix A of the NFL Parties' Memorandum of Law in Support of Final Approval, ECF No. 6422, and Exhibit 12 of Class Plaintiffs' Motion for Final Approval and Class Certification, ECF No. 6423-14.

requests. *See* Eighth Opt-Out Report of Claims Administrator ¶ 2, ECF No. 6507. I also accepted *amicus curiae* submissions from two groups. *See* Submission of Brain Injury Association of America, Decl. of Drs. Brent Masel & Gregory O’Shanick, ECF No. 6180-2 (“Drs. Masel & O’Shanick Decl.”); Mem. of Public Citizen, ECF. No. 6214-1; Supp. Mem. of Public Citizen, ECF. No. 6451-1.

On November 12, 2014, Class Plaintiffs moved for class certification and final approval of the Settlement. *See* Class Plaintiffs’ Mot. for Final Approval and Class Certification, ECF No. 6423. On November 19, 2014, I held a day-long final Fairness Hearing on the merits of the Settlement. *See* Am. Fairness Hr’g Tr., ECF No. 6463. Because many of the objections raised duplicative issues, I asked Objectors represented by attorneys to coordinate their presentations to streamline the Fairness Hearing.²⁴ Every Class Member who submitted a timely objection, and who was not represented by an attorney, was given an opportunity to speak at the Fairness Hearing. *See* Notice, Nov. 4, 2014, ECF No. 6344; Notice of Fairness Hr’g Schedule, ECF No. 6428.

Though participants discussed a host of issues, much of the Fairness Hearing focused on the scientific underpinnings of CTE. In support of their positions, the Parties, Objectors, and Amici collectively submitted briefs, hundreds of pages of exhibits, dozens of scientific articles, and 22 expert declarations.

After reviewing the moving papers, the objections, and the arguments made at the Fairness Hearing, I proposed several changes to the Settlement that would benefit Class Members. *See* Order, Feb. 2, 2015, ECF No. 6479. Specifically, I requested that:

²⁴ *See* Notice, Nov. 4, 2014, ECF No. 6344. At my request, attorney Steven Molo and his firm undertook this task.

- Retired Players receive credit for time they spent playing in overseas NFL affiliate leagues;²⁵
- All Retired Players who seek and are eligible for a baseline assessment examination receive one, notwithstanding the \$75 million cap;
- The NFL Parties compensate Qualifying Diagnoses of Death with CTE up until the Final Approval Date;
- The Parties relax certain procedural requirements in the claims process in extenuating circumstances.

Id. On February 13, 2015, Class Counsel and the NFL Parties agreed with my proposed changes in their entirety, and submitted the amended Settlement described *supra* Section I.D. *See* Parties' Joint Amendment.

II. Class Certification

For a class action to have preclusive effect and bind absent class members, a class must first be certified. Rule 23(a) of the Federal Rules of Civil Procedure lays out four threshold requirements for certification: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. Fed. R. Civ. P. 23(a). *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997). Because this is a Rule 23(b)(3) class, two additional requirements must be met: (1) common questions must predominate over any questions affecting only individual members, and (2) class resolution must be superior to other available methods to adjudicate the controversy. Fed. R. Civ. P. 23(b)(3).

Class certification “demand[s] undiluted, even heightened, attention in the settlement context.” *Amchem*, 521 U.S. at 620; *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods.*

²⁵ These include the World League of American Football, NFL Europe League, and NFL Europa League (collectively, “NFL Europe”).

Liab. Litig., 55 F.3d 768, 797-99 (3d Cir. 1995) (hereinafter “*GM Trucks*”). However, the existence of a settlement means that “certain Rule 23 considerations . . . are not applicable.” *Rodriguez v. Nat’l City Bank*, 726 F.3d 372, 378 (3d Cir. 2013). For example, because a settlement obviates the need for trial, concerns regarding the manageability of a Rule 23(b)(3) class disappear. *See Amchem*, 521 U.S. at 619; *see also Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 297 (3d Cir. 2011) (en banc) (noting that “concerns regarding variations in state law largely dissipate when a court is considering the certification of a settlement class”); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 529 (3d Cir. 2004) (“[C]oncerns with regards to case manageability that arise with litigation classes are not present with settlement classes, and thus those variations are irrelevant” (citing *Amchem*, 521 U.S. at 620)).

The proposed Class and Subclasses meet the Rule 23(a) and 23(b)(3) requirements and warrant certification.

A. Numerosity

Rule 23(a)(1) requires that a class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Thousands of Retired Players have filed suit against the NFL Parties in this MDL. The Parties estimate that there are over 20,000 Retired Players in the Class, as well as additional Representative Claimants and Derivative Claimants. *See* Class Counsel’s Actuarial Materials at 3; NFL Parties’ Actuarial Materials ¶ 16. The numerosity requirement of Rule 23(a) is satisfied. *See, e.g., Stewart v. Abraham*, 275 F.3d 220, 227-28 (3d Cir. 2001) (noting requirement typically satisfied by more than 40 plaintiffs).

B. Commonality

Rule 23(a)(2) requires that class members’ claims share common questions of law or common questions of fact. The standard is not stringent; only one common question is required.

See Rodriguez, 726 F.3d at 382 (concluding the bar commonality sets “is not a high one”); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 310 (3d Cir. 1998) (factor satisfied “if the named plaintiffs share at least one question of fact or law” with the prospective class (internal quotation marks omitted)). To satisfy commonality, class claims “must depend upon a common contention . . . of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011).

Commonality is satisfied here. The critical factual questions in this case are common to all Class Members. These include whether the NFL Parties knew and suppressed information about the risks of concussive hits, as well as causation questions about whether concussive hits increase the likelihood that Retired Players will develop conditions that lead to Qualifying Diagnoses. Class Members also face a host of common legal questions, such as the nature and extent of any duty owed to Retired Players by the NFL Parties, and whether LMRA preemption, workers’ compensation, or some affirmative defense would bar their claims.

Citing *Wal-Mart*, Objectors contend that commonality is not satisfied because each Retired Player was injured “in unique and disparate ways.”²⁶ Heimburger Obj. at 13, ECF No. 6230. While it is true that no two Retired Players’ concussion history or symptoms are identical, commonality still exists. Common legal and factual questions are at the heart of this case. Essential questions include whether the CBAs mandate compulsory arbitration, and whether the

²⁶ Section V addresses the majority of the objections. Where relevant however, specific objections to class certification, Class Notice, and the application of the factors enunciated in *Girsh v. Jepsen*, 521 F.2d 153 (3d Cir. 1975) and *In re Prudential Insurance Co. of America Sales Practices Litigation*, 148 F.3d 283 (3d Cir. 1998) are discussed in Sections II, III, and IV, respectively.

NFL Parties used the MTBI Committee to fraudulently refute the dangers of head injuries. No Class Member could prevail without proving the NFL Parties' misconduct.

The common issues in this case satisfy the Supreme Court's concerns in *Wal-Mart*. In *Wal-Mart*, a putative class of female employees argued they were systematically denied promotions and pay raises because of their gender. The Court found no commonality because Wal-Mart had no formal policy regarding either promotions or pay raises; each decision was left to a local manager's discretion. *Wal-Mart*, 131 S. Ct. at 2554. Thus, the determination that one manager's decision was sexist would not affect the determination of whether another manager's decision in a different store was sexist as well. *Id.* By contrast, the NFL Parties allegedly injured Retired Players through the same common course of conduct: refusing to alter league rules to make the game safer, failing to warn of the dangers of head injuries, and establishing the MTBI Committee. *See Sullivan*, 667 F.3d at 299.

The commonality requirement is satisfied.

C. Typicality

Rule 23(a)(3) requires that the class representatives' claims be "typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(3). "The typicality requirement is designed to align the interests of the class and the class representatives" *Prudential*, 148 F.3d at 311.

The Third Circuit has "set a low threshold for satisfying" the typicality requirement. *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 183 (3d Cir. 2001). "Even relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories' or where the claim arises from the same practice or course of conduct." *Prudential*, 148 F.3d at 311 (quoting *Baby Neal v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994)); *see also Warfarin*, 391 F.3d at 532 (holding district court did not

abuse its discretion in finding the typicality requirement was satisfied where the claims of the representative plaintiffs arose “from the same alleged wrongful conduct . . . [and] the same general legal theories”)

The Class Representatives have claims typical of those they represent. Shawn Wooden, the Representative of Subclass 1, is a Retired Player who has not been diagnosed with a Qualifying Diagnosis. Like many other Class Members, he seeks a baseline assessment examination to determine whether he has any neurocognitive impairment resulting from his years of playing NFL Football. If he ultimately develops a Qualifying Diagnosis, he will seek a Monetary Award. Kevin Turner, the Representative of Subclass 2, is a Retired Player who has been diagnosed with ALS. Similar to other Class Members who have already received Qualifying Diagnoses, he seeks compensation from the NFL Parties for his injuries.

Wooden and Turner seek recovery pursuant to the same legal theories as the absent Class Members. They claim the NFL Parties should have known of, or intentionally concealed, the risks of head injuries in NFL Football. The claims of all Class Members, Wooden and Turner included, derive from the same wrongful course of conduct: the NFL Parties’ decision to promote and structure NFL Football in a way that increased concussive impacts.

Some Objectors argue that Wooden’s and Turner’s claims are not typical because they did not play in NFL Europe, and they both had long careers in the NFL while others’ careers were relatively brief. Objectors point to Retired Player Craig Heimbarger as an example that typicality is lacking because Heimbarger had a relatively short career and neither Representative suffers from Heimbarger’s specific symptoms. *See* Heimbarger Obj. at 3, 12.

The factual differences among Retired Players do not defeat typicality. Class members need not “share identical claims.” *Baby Neal*, 43 F.3d at 56. “[C]ases challenging the same unlawful

conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims.” *Id.* at 58. Heimburger’s short form complaint demonstrates that his damages stem from the same source as Wooden’s and Turner’s damages: “repetitive, traumatic sub-concussive and/or concussive head impacts during NFL games and/or practices.” Heimburger Short Form Compl. at 2, ECF No. 1938. Like Wooden, Heimburger seeks medical monitoring. *Id.* at 5. Like Wooden’s and Turner’s injuries, Heimburger’s injuries sound in negligence and fraud. *Id.* The remaining differences between Heimburger and the Class Representatives are immaterial to the typicality analysis.

The typicality requirement is satisfied.

D. Adequacy of Representation

Rule 23(a)(4) requires class representatives to “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). It tests both the qualifications of class counsel and the class representatives to represent a class. *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434, 449 (3d Cir. 1977) (requiring both “representatives and their attorneys [to] competently, responsibly and vigorously prosecute the suit”), *abrogated on unrelated grounds by In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 325 n.25 (3d Cir. 2010). It also seeks to uncover conflicts of interest between class representatives and the class they represent. *See Warfarin*, 391 F.3d at 532.

i. Adequacy of Class Counsel

When examining settlement classes, courts “have emphasized the special need to assure that class counsel: (1) possessed adequate experience; (2) vigorously prosecuted the action; and (3) acted at arm’s length from the defendant.”²⁷ *GM Trucks*, 55 F.3d at 801.

No Objector challenges the expertise of Class Counsel. Co-Lead Class Counsel Christopher Seeger has spent decades litigating mass torts, class actions, and multidistrict litigations. He has served as plaintiffs’ lead counsel, or as a member of the plaintiffs’ executive committee or steering committee in over twenty cases. *See* Seeger Decl. ¶¶ 2-4. Co-Lead Class Counsel Sol Weiss, Subclass Counsel Arnold Levin and Dianne Nast, and Class Counsel Gene Locks and Steven Marks possess similar credentials. *See In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, 2000 WL 1222042, at *44 (E.D. Pa. Aug. 28, 2000) (“Each of the Class Counsel [Arnold Levin, Sol Weiss, Gene Locks and others] are experienced in the conduct of class litigation, mass tort litigation and complex personal injury litigation”); Seeger Decl. ¶ 27 (noting that Steven Marks and Sol Weiss are “attorneys with decades of class action and MDL litigation experience”); Levin Decl. ¶ 2 (noting leadership positions in over 100 class actions, mass torts, and complex personal injury suits); Nast Decl. ¶ 2 (noting leadership positions in over 48 complex cases).

²⁷ In 2003, Congress amended Rule 23 to include subdivision 23(g), which provides a non-exhaustive list of factors for a court to consider when scrutinizing the adequacy of class counsel’s representation. *See* Fed R. Civ. P. 23(g). The addition was meant to transfer the analysis of class counsel’s representation from Rule 23(a)(4), where it had little textual support, to Rule 23(g). *See* Newberg on Class Actions § 3:80 (5th ed.). Rule 23(g) “builds on” the existing 23(a)(4) jurisprudence instead of “introducing an entirely new element into the class certification process.” *See* Fed. R. Civ. P. 23(g) advisory committee’s notes (2003 amendments). Accordingly, the Third Circuit continues to apply the factors *GM Trucks* relied on prior to the addition of Rule 23(g). *See In re Cmty. Bank of N. Va.*, 622 F.3d 275, 304-05 (3d Cir. 2010); *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 307 (3d Cir. 2005). Class Counsel’s representation of the Class satisfies both Rule 23(g) and 23(a)(4).

Class Counsel vigorously prosecuted the action at arm's length from the NFL Parties. Mediator Judge Phillips notes that during negotiations "Plaintiffs' counsel [] consistently and passionately expressed the need to protect the interests of the retirees and their families and fought hard for the greatest possible benefits" Phillips Supp. Decl. ¶¶ 2-5, 8-10; Phillips Decl. ¶¶ 2, 5-7, 11; Mem. in Supp. of Preliminary Approval Order, ECF No. 6083 ("[I]t appears that the proposed Settlement is the product of good faith, arm's length negotiations."). "It was evident throughout the mediation process that Plaintiffs' counsel were prepared to litigate and try these cases . . . if they were not able to achieve a fair and reasonable settlement" Phillips Supp. Decl. ¶ 3.

The substantial concessions Class Counsel were able to extract from the NFL Parties confirm Judge Phillips' observations. "[T]he uncapped nature of the proposed settlement . . . indicate[s] that class counsel and the named plaintiffs have attempted to serve the best interests of the class as a whole." *Prudential*, 148 F.3d at 313.

Some Objectors point to Class Counsel's proposed fee award as evidence that representation was collusive or self-serving.²⁸ *See, e.g.*, Morey Obj. at 79-80, ECF No. 6201; Heimbürger Obj. at 19-21. Class Counsel, however, did not move for a fee award in connection with final approval. At an appropriate time after the Effective Date of the Settlement, Class Counsel may file a fee petition that Class Members will be free to contest. Any award will be separate from, and in addition to, the NFL Parties' other obligations under the Settlement. *See* Settlement § 21.1. The NFL Parties have agreed not to contest any award of attorneys' fees and costs equal to or below \$112.5 million.

None of the fee provisions in the Settlement indicate inadequate representation. Courts are wary when attorneys' fees are taken from a common fund because any fee given to class counsel

²⁸ For an additional discussion of fees, see *infra* Section IV.C.

will detract from funds available to the class. Courts are sometimes wary even when attorneys' fees are taken from an ostensibly separate fund because of the fear that the formal division between fees and class funds is illusory and that attorneys' fees will still deplete the amount available to the class. *See GM Trucks*, 55 F.3d at 803-05, 819-20.

A fee award in this case will not come from a common fund. The ultimate amount the NFL Parties must pay in attorneys' fees will have no impact on the Monetary Awards paid or baseline assessment examinations given because the NFL Parties have already guaranteed these benefits, in full, to eligible claimants. *See Settlement* § 21.1; *see also Court Awarded Attorney Fees: Report of the Third Circuit Task Force*, 108 F.R.D. 238, 266 (1985) (noting a conflict of interest exists when "a large attorney's fee means a smaller recovery to plaintiff").

Moreover, the course of negotiations in this case provides assurances that attorneys' fees did not reduce the recovery available to the Class. According to Mediator Phillips, the Parties were careful not to discuss fees until after the Court had announced, on the record, an agreement regarding the total compensation for Class Members. *See Phillips Supp. Decl.* ¶ 19; Order, Aug. 29, 2013. Because Class benefits were fixed by the time the Parties discussed fees, the amount given to the Class was not compromised. *See In re Oil Spill by Oil Rig Deepwater Horizon*, 295 F.R.D. 112, 138 (E.D. La. 2013) ("*Deepwater Horizon Clean-Up Settlement*") (noting mediator's involvement during negotiations "further ensured structural integrity"); *cf. In re Cmty. Bank of N. Va.*, 418 F.3d 277, 308 (3d Cir. 2005) (noting "special danger of collusiveness" when fees "were negotiated simultaneously with the settlement").

Finally, Objectors point to the presence of a clear sailing provision, meaning that the NFL Parties have agreed not to contest any award of attorneys' fees and costs equal to or below \$112.5 million, as evidence of collusion. While Objectors are correct that a clear sailing

Materials at 3 and NFL Parties' Actuarial Materials ¶ 20. Courts are wary of clear sailing provisions when they insulate disproportionate fee awards. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011) (clear sailing provision was a "warning sign[]" when attorneys' fees cap was "up to eight times the monetary *cy pres* relief afforded the class," and there was no other recovery); *cf. Gooch*, 672 F.3d at 426 ("We find collusion particularly unlikely in this instance where the clear sailing provision caps attorney compensation at approximately 2.3% of the total expected value of the settlement to the class members. The majority of common fund fee awards fall between 20% and 30% of the fund." (internal quotation marks omitted)); *Harris v. Vector Mktg. Corp.*, No. 08-5198, 2012 WL 381202, at *5 (N.D. Cal. Feb. 6, 2012) (approving revised settlement because "[u]nlike the initial settlement, the award to the class . . . [was] not substantially outstripped by a 'clear sailing' attorney fee provision"). Here, the uncontested fee award cap is not disproportionate to the compensation provided to the Class.

Of course, the clear sailing provision does not require the Court to approve the uncontested \$112.5 million award, or any other requested amount. The Court reserves full discretion to award reasonable attorneys' fees. *See infra* Section IV.C.

ii. Adequacy of Named Parties

A class representative must also capably and diligently represent a class. This standard is easily met: "A class representative need only possess a minimal degree of knowledge" about the litigation to be adequate. *New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 313 (3d Cir. 2007) (internal quotation marks omitted); *see also Greenfield v. Villager Indus., Inc.*, 483 F.2d 824, 832 n.9 (3d Cir. 1973) ("Experience teaches that it is counsel for the class representative and not the named parties, who direct and manage these actions."). Despite this,

Objectors challenge whether Shawn Wooden and Kevin Turner fulfilled their roles as Class Representatives. *See* Morey Obj. at 80; Heimburger Obj. at 12-13; Utecht Obj. at 6-7, ECF No. 6243 (arguing that Class Representatives should be required to testify that they were advised of various provisions of the Settlement).

Both Class Representatives ably discharged their duties. Wooden and Turner have followed the litigation closely, including the negotiations process and the multiple revisions to the Settlement. *See* Aff. of Kevin Turner ¶¶ 6-9, ECF No. 6423-7 (“Turner Aff.”); Aff. of Shawn Wooden ¶¶ 3-5, 7, ECF No. 6423-8 (“Wooden Aff.”). Each authorized the filing of the Class Action Complaint and approved the Settlement. Turner Aff. ¶¶ 8-9; Wooden Aff. ¶¶ 6-8. Although Wooden and Turner did not actively participate in settlement negotiations, their participation is not required. *See Lewis v. Curtis*, 671 F.2d 779, 789 (3d Cir. 1982) (“The adequacy-of-representation test is not concerned [with] whether plaintiff . . . will personally be able to assist his counsel.”), *abrogated on other grounds by Garber v. Lego*, 11 F.3d 1197, 1206-07 (3d Cir. 1993).

iii. Absence of Conflicts of Interest

“The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent.” *Amchem*, 521 U.S. at 625 (citing *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157-58, n.13 (1982)). The “linchpin of the adequacy requirement is the alignment of interests and incentives between the representative plaintiffs and the rest of the class.” *Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 183 (3d Cir. 2012).

Not every distinction between a class member and a class representative renders the representative inadequate. “A conflict must be fundamental to violate Rule 23(a)(4).” *Id.* at 184

(internal quotation marks omitted). “A fundamental conflict exists where some [class] members claim to have been harmed by the same conduct that benefitted other members of the class.” *Id.* (alteration in original) (internal quotation marks omitted). This occurs when, “by maximizing their own interests, the putative representatives would necessarily undercut the interests of another portion of the class.” Newberg on Class Actions § 3:58 (5th ed.). Benefits awarded to some class members, but not others, without adequate justification may indicate that other class members were inadequately represented. *See GM Trucks*, 55 F.3d at 797.

Structural protections in the class definition and settlement, such as separate subclasses or an uncapped fund, may eliminate fundamental conflicts. *See Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 631 (3d Cir. 1996) (suggesting use of “structural protections to assure that differently situated plaintiffs negotiate for their own unique interests”), *aff’d sub nom. Amchem*, 521 U.S. at 591. In this case, no fundamental conflicts exist.

All Class Members allegedly were injured by the same scheme: the NFL Parties negligently and fraudulently de-emphasized the medical effects of concussions to keep Retired Players in games. Class incentives are aligned because “[t]he named parties, like the members of the class, would need to establish this scheme in order to succeed on any of the claims” asserted. *Prudential*, 148 F.3d at 313; *see also Warfarin*, 391 F.3d at 532 (finding adequacy satisfied in part because “all shared the same goal of establishing the liability of DuPont”).

The Class includes two Subclasses that prevent conflicts of interest between Class Members. *Amchem* held that an undifferentiated class containing those with present injuries and those who have not yet manifested injury is beset by a conflict of interest. *See Prudential*, 148 F.3d at 313. Recognizing this problem, Class Counsel subdivided the Class into two Subclasses: Retired Players who have already received a Qualifying Diagnosis (and their Representative and

Derivative Claimants) and Retired Players who have not. *See Ortiz v. Fibreboard*, 527 U.S. 815, 856 (1999) (holding that “a class including holders of present and future claims . . . requires division into homogenous subclasses”). Each Subclass has its own independent counsel. *Warfarin*, 391 F.3d at 533 (noting that “any potential for conflicts of interest . . . that may have arisen prior to and during the settlement negotiations were adequately [addressed] by the presence of separate counsel”).

Each Subclass Representative’s interests reflect the interests of the Subclass as a whole. As with all other Retired Players who already have a Qualifying Diagnosis, Kevin Turner is interested in immediately obtaining the greatest possible compensation for his injuries and symptoms. Shawn Wooden, like all other Retired Players without a Qualifying Diagnosis, is interested in monitoring his symptoms, guaranteeing that generous compensation will be available far into the future, and ensuring an agreement that keeps pace with scientific advances. Because Wooden does not know which, if any, condition he will develop, he has an interest in ensuring that the Settlement compensates as many conditions as possible.

Additional structural protections in the Settlement ensure that each Class Member is adequately represented. Every Retired Player who receives a Qualifying Diagnosis during the 65-year life of the Settlement is entitled to a Monetary Award. The Monetary Award Fund is uncapped and baseline assessment examinations are guaranteed for all eligible Retired Players. That one Retired Player receives a Monetary Award or undergoes a baseline assessment examination presents no impediment to any other Class Member’s recovery. *See Warfarin*, 391 F.3d at 532 (holding that the district court did not abuse its discretion in finding adequacy of representation satisfied in part because “recovery did not change depending on the number of the people in the class, [avoiding] the problem of ‘splitting the settlement’”). Monetary Awards are

also indexed to inflation. Retired Players who receive Qualifying Diagnoses in the future will be on equal footing with those who are currently suffering. Additionally, the Settlement provides Supplemental Monetary Awards for worsening symptoms. Retired Players who receive more severe Qualifying Diagnoses after receiving initial Monetary Awards are entitled to supplemental payments. *See Diet Drugs*, 2000 WL 1222042, at *49 (noting that class members with injuries that will worsen over time “are protected by the settlement in that they may ‘step up’ to higher amounts of compensation on the matrices as their level of disease progresses”).

Moreover, the presence of Mediator Judge Phillips and Special Master Golkin helped guarantee that the Parties did not compromise some Class Members’ claims in order to benefit other Class Members. “Plaintiffs’ counsel . . . fought hard for the greatest possible benefits for *all* of the players” and “demanded that a range of injuries consistent with those alleged in the Complaints be considered eligible for a monetary award.” Phillips Supp. Decl. ¶¶ 2, 8 (emphasis added).

Objectors contend that an additional subclass is necessary for Retired Players who suffer from CTE. They argue that Subclass Representative Shawn Wooden does not allege that he is at risk of developing the disease. *See, e.g.*, Morey Obj. at 27 (“Mr. Wooden, by contrast, has not alleged that he suffers from CTE.”); Chelsey Obj. at 11, ECF No. 6242; Duerson Obj. at 17-18, ECF No. 6241; Miller Obj. at 3-4, ECF No. 6213; Chelsey Supplemental Obj. at 7, ECF No. 6453.

Shawn Wooden has adequately alleged that he is at risk of developing CTE. In the Master Administrative Class Action Complaint, one of the operative pleadings for this MDL, Wooden alleges he “is at increased risk of latent brain injuries caused by [] repeated traumatic head impacts,” which, as Objectors point out, include CTE. *See* Master Administrative Class Action

Complaint ¶ 7; Morey Obj. at 21 (alleging “CTE . . . is associated with repetitive mild traumatic brain injury” (internal quotation marks omitted)). Moreover, as Subclass Representative, Wooden authorized the filing of the Class Action Complaint, which alleges that Retired Players are at risk for developing “mood swings, personality changes, and the debilitating and latent disease known as CTE.” Class Action Complaint ¶ 61; *see also* Wooden Aff. ¶ 6.

A subclass of CTE sufferers is both unnecessary and poses a serious practical problem. It is impossible to have a Class Representative who has CTE because, as Objectors concede, CTE can only be diagnosed after death. *See, e.g.*, Morey Obj. at 26; Chelsey Obj. at 9; *infra* Section V.A.i. Thus, the best Subclass Representative for individuals who will be diagnosed with CTE post mortem is one who alleges exposure to the traumatic head impacts that cause CTE and who has an incentive to negotiate for varied and generous future awards in light of the current uncertainty in his diagnosis. In other words, the best Subclass Representative for CTE is someone in Shawn Wooden’s position.

Finally, Objectors and Amici incorrectly allege that a variety of fundamental conflicts exist because Retired Players receive different compensation based on their age,²⁹ medical history,³⁰ the number of seasons they played,³¹ and other distinctions contained within the Settlement.³² In the same vein, Amici argue that inadequate representation exists because different Qualifying Diagnoses have different maximum awards.³³ Retired Players with ALS, for example, can receive a maximum award of \$5 million, while Retired Players with Alzheimer’s Disease can

²⁹ *See* Mem. of Public Citizen at 4, ECF No. 6214-1 (alleging conflict of interest based on age offsets).

³⁰ *See, e.g.*, Morey Obj. at 32-34, ECF No. 6201 (objecting to Stroke and severe TBI offsets); Armstrong Obj. at 17, ECF No. 6233.

³¹ *See* Armstrong Obj. at 15-16. (alleging conflict of interest based on number of eligible seasons offset).

³² Many Objectors also point to the lack of Eligible Season credit for Retired Players who played in NFL Europe as evidence of inadequate representation. However, the Parties amended the Settlement to address this concern, so this objection is no longer relevant. *See infra* Section V.C.iv.

³³ *See* Mem. of Public Citizen at 5 (“The third set of conflicts relates to how and why the dollar figures were assigned for each compensated disease category on the grid.”).

only receive a maximum award of \$3.5 million. Additionally, Objectors argue that many symptoms, particularly mood and behavioral symptoms such as depression, impulsivity, or suicidality, are not compensated.³⁴ They call for increased benefits under the Settlement and the creation of additional subclasses. *See, e.g.*, Heimburger Obj. at 8 (“Two settlement classes are not enough for a fact-pattern this complex . . .”).

Adequacy of representation of a class is not compromised simply because there may be differences in the condition or treatment of different class members. “[V]aried relief among class members with differing claims is not unusual. Such differences in settlement value do not, without more, demonstrate conflicting or antagonistic interests within the class.” *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 346 (3d Cir. 2010) (citations omitted). Differing recovery is “simply a reflection of the extent of the injury that certain class members incurred.” *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 272 (3d Cir. 2009). Plaintiffs with different injuries can coexist in a class consistent with Rule 23 and Due Process. *See Warfarin*, 391 F.3d at 532 (upholding class certification of “a single class including several types of injured plaintiffs”).

In this case, differing levels of compensation in the Settlement reflect the underlying strength of Class Members’ claims. *See Pet Food*, 629 F.3d at 347 (affirming district court’s conclusion that differing awards to class members “reflect the relative value of the different claims,” not “divergent interests between the allocation groups”); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140,

³⁴ *See, e.g.*, Heimburger Obj. at 10, ECF No. 6230 (noting conflict because of “cognitive injur[ies] . . . not compensated by the [S]ettlement”); Duerson Obj. at 20-21, 25, ECF No. 6241 (noting lack of compensation for “sensitivity to noise, visual impairment, chronic pain, chronic headaches, incessant ringing in ears, attention disorders, trouble sleeping, aggression, agitation, impulsivity, suicidal thoughts and difficulty regulating, expressing and controlling complex emotions,” and epilepsy); Armstrong Obj. at 10-12 (listing pituitary hormonal dysfunction, atherosclerosis, fatigue, decreased muscle mass and weakness, mood abnormalities, epilepsy, vestibular (balance) disturbances, anosmia, ageusia, and other “physical, neurological and neurobehavioral consequences” that are “missing from the list of [Q]ualifying [D]iagnoses in the [Settlement]”); Chelsey Obj. at 5, ECF No. 6242 (noting lack of compensation for “chronic headaches, depression, mood disorders, sleep dysfunction,” and other symptoms).

1146 (8th Cir. 1999) (“If the objectors mean . . . that a conflict of interest requiring subdivision is created when some class members receive more than other class members in a settlement, we think that the argument is untenable.”).

The factual basis for the distinctions among Class Members will be addressed in detail during the Rule 23(e) analysis because Objectors’ challenges to the fairness of the Settlement overlap with their challenges to adequacy of representation.³⁵ A brief summary of the justifications for distinctions made between Class Members follows.

The different maximum awards that Class Members receive for different Qualifying Diagnoses reflect the severity of the injury and symptoms suffered by each Retired Player, and do not indicate inadequate representation. *See Diet Drugs*, 2000 WL 1222042, at *21-22 (approving personal injury class settlement providing a range of monetary awards based on severity of injury).

The offset for Retired Players with fewer than five Eligible Seasons is a reasonable proxy for Retired Players’ exposure to repetitive head trauma in the NFL. Retired Players with brief careers endured fewer hits, making it less likely that NFL Football caused their impairments. Research supports the claim that repeated head trauma has an association with the Qualifying Diagnoses.

The Stroke, severe TBI, and age offsets all represent scientifically documented risk factors for the Qualifying Diagnoses. Each is strongly associated with neurocognitive illness. Older Retired Players, as well as Retired Players who suffered from Stroke or severe TBI outside of NFL Football, would find it more difficult to prove causation if they litigated their claims, justifying a smaller award. *See In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 227

³⁵ For a discussion of the Settlement’s offsets, see *infra* Section V.C. For a discussion of the differences in monetary awards, and which conditions are compensated, see *infra* Section V.B.ii. For a discussion of CTE, see *infra* Section V.A.

compensate dozens of symptoms allegedly associated with repeated concussions.³⁶ They assert that because Class Representative Kevin Turner only has ALS, he cannot adequately represent individuals with different symptoms. *See* Morey Obj. at 27; Miller Obj. at 3; Mem. of Public Citizen at 3. Requiring independent representation to address each of these symptoms likely would not have increased the total recovery of Class Members. Instead, negotiations probably would have ground to a halt. Moreover, Shawn Wooden, Class Representative for Subclass 1, already represents all Class Members because he does not know which, if any, condition he will develop. Thus, he has an interest in ensuring that the Settlement compensates as many conditions and symptoms as possible, and provides Class Members with the highest possible maximum award for each Qualifying Diagnosis.

In conclusion, Class Counsel and Class Representatives adequately represented absent Class Members. There are no fundamental conflicts of interest between Class Representatives and the Class. The adequacy of representation requirement is satisfied.

E. Predominance

Under Rule 23(b)(3), an opt-out class may be maintained if “the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members.” Fed. R. Civ. P. 23(b)(3). Predominance “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation,” *Amchem*, 521 U.S. at 623, to determine whether the proposed class ““would achieve economies of time, effort, and expense.”” *Id.* at 615 (quoting Fed R. Civ. P. 23(b)(3) advisory committee’s notes (1966 amendments)). The predominance inquiry is a more stringent version of the commonality analysis; common questions must drive the litigation. *See Danvers Motor Co. v. Ford Motor Co.*, 543 F.3d 141, 148 (3d Cir. 2008) (“[T]he commonality requirement is subsumed by the predominance

³⁶ *See supra* note 34.

does not prevent certification.³⁷ See *Insurance Brokerage*, 579 F.3d at 269 (3d Cir. 2009) (“[W]e are satisfied that . . . the fact of damages [] is susceptible to common proof, even if the amount of damage that each plaintiff suffered could not be established by common proof.”); *GM Trucks*, 55 F.3d at 817 (“Because separate proceedings can, if necessary, be held on individualized issues such as damages or reliance, such individual questions do not ordinarily preclude the use of the class action device.”).

Additionally, the NFL Parties’ alleged conduct raises common and dispositive scientific questions. Each Class Member would have to confront the same causation issues in proving that repeated concussive blows give rise to long-term neurological damage.

Resolution of these issues would “so advance the litigation that they may fairly be said to predominate,” *In re Sch. Asbestos Litig.*, 789 F.2d 996, 1010 (3d Cir. 1986), because the “same set of core operative facts and theory of proximate cause apply to each member of the class.” *In re Pet Food Prods. Liab. Litig.*, No. 07-2867, 2008 WL 4937632, at *6 (D.N.J. Nov. 18, 2008), *aff’d in part, vacated in part, remanded*, 629 F.3d 333 (3d Cir. 2010).

This case is far more cohesive than the “sprawling” class at issue in *Amchem*. There, the Supreme Court found a settlement class of asbestos victims overbroad because class members were exposed to the different asbestos products of over twenty companies during a variety of

³⁷ The Supreme Court’s decision in *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013), does not undermine this conclusion. “*Comcast* . . . did not hold that proponents of class certification must rely upon a classwide damages model to demonstrate predominance.” *Roach v. T.L. Cannon Corp.*, 778 F.3d 401, 407 (2d Cir. 2015). All of the Circuit Courts that have had an opportunity to apply *Comcast* have reached this same conclusion. *Id.* at 408 (citing opinions of the First, Fifth, Sixth, Seventh, Ninth, and Tenth Circuits). Rather, “*Comcast* held that a model for determining classwide damages relied upon to certify a class under Rule 23(b)(3) must actually measure damages that result from the class’s asserted theory of injury” *Id.* at 407. Thus, in order to prove predominance, “a plaintiff cannot rely on challenged expert testimony, when critical to class certification, to demonstrate conformity with Rule 23 unless the plaintiff also demonstrates, and the trial court finds, that the expert testimony satisfies the standard set out in *Daubert*.” *In re Blood Reagents Antitrust Litig.*, --- F.3d---, No. 12-4067, 2015 WL 1543101, at *3 (3d Cir. Apr. 8, 2015) (discussing *Comcast*). Here, Class Plaintiffs seek to certify a class for settlement purposes, and the NFL Parties do not challenge any expert testimony relied on to establish predominance. Thus, *Comcast* and *Blood Reagents* are inapposite to this case.

different activities. *See Amchem*, 521 U.S. at 597, 624. Here, all injuries stem from repeated participation in the same activity, NFL Football, an activity created and administered only by the NFL Parties.

Further, *Amchem* involved thousands of plaintiffs who had little or no relationship with each other. Many did not even know definitively whether they had been exposed to asbestos. *See* 521 U.S. at 628. By contrast, Retired Players are of course all aware of the fact that they played in the NFL. Indeed, Retired Players and their families think of themselves as a discrete group, and many continue to interact with one another because they all shared the common experience of professional football. *See, e.g.,* Am. Fairness Hr’g Tr. at 185:14-18 (one Objector noting that she was “raised in the NFL” because she spent a lot of time around Retired Players and that former players called themselves her “brothers”). Class Members in this case self-associate in a way that those in a typical mass tort, involving, for example, purchasers of a car with a defective part, simply do not. *Cf. Dewey*, 681 F.3d at 170. As a result, the Class is far more cohesive.

Additionally, settlement itself allows common issues to predominate. “[C]ourts are more inclined to find the predominance test met in the settlement context,” *Sullivan*, 667 F.3d at 304 n.29 (3d Cir. 2011) (internal quotation marks omitted), because the “individual issues which are normally present in personal injury litigation become irrelevant, allowing the common issues to predominate.” *Diet Drugs*, 2000 WL 1222042, at *43; *see also* Newberg on Class Actions § 4:63 (5th ed.) (“[I]n settlement class actions . . . predominance . . . recedes in importance Thus, many courts have held that individualized issues may bar certification for adjudication because of predominance-related manageability concerns but that these same problems do not bar certification for settlement.”).

Objectors argue that “courts simply do not permit the certification of personal-injury classes.” Heimburger Obj. at 15. This is incorrect. Even *Amchem*, the case on which they primarily rely, states that “the text of [Rule 23] does not categorically exclude mass tort cases from class certification, and District Courts, since the late 1970’s, have been certifying such cases in increasing number.” 521 U.S. at 625. Indeed, the trend has been particularly strong where, as here, “there are no unknown future claimants and the absent class members are readily identifiable and can be given notice and an opportunity to opt out.”³⁸ Manual for Complex Litigation § 22.72 (4th ed.); see, e.g., *Diet Drugs*, 2000 WL 1222042, at *68 (certifying personal injury settlement class for individuals who received harmful drug prescriptions); *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prods. Liab. Litig.*, 369 F.3d 293, 317 (3d Cir. 2004) (describing settlement as a “landmark effort to reconcile the rights of millions of individual plaintiffs with the efficiencies and fairness of a class-based settlement”); *Deepwater Horizon Clean-Up Settlement*, 295 F.R.D. at 161 (certifying a Rule 23(b)(3) settlement class for personal injuries resulting from oil spill); *In re Serzone Prods. Liab. Litig.*, 231 F.R.D. 221, 223 (S.D. W. Va. 2005) (certifying a Rule 23(b)(3) settlement class of “users and purchasers” of pharmaceutical products alleging a “range of physical and economic injuries”); *PPA Prods. Liab. Litig.*, 227 F.R.D. at 555-56 (certifying a Rule 23(b)(3) class and approving settlement of claims alleging “increased risk of hemorrhagic stroke” and “a variety of injuries” caused by defective products).

The predominance requirement is satisfied.

³⁸ See *infra* Section III.B, discussing how Class Members are easily identifiable by virtue of having played NFL Football, a well-catalogued and documented event. Because the Settlement covers only Retired Players (and their Representative and Derivative Claimants), the Class is a closed set and the Court and the Parties have an almost complete list of possible claimants. See Class Counsel’s Actuarial Materials at 13-14 (concluding that because “extensive historical data are available from a variety of authoritative sources . . . the entire population of former NFL players,” including the deceased, have been identified).

F. Superiority

Rule 23(b)(3)’s superiority requirement “asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those alternative available methods of adjudication.” *Warfarin*, 391 F.3d at 533-34 (internal quotation marks omitted).

Superiority is satisfied because the Settlement avoids thousands of duplicative lawsuits and enables fast processing of a multitude of claims. The Third Circuit recognizes that “concentrating the litigation of [] claims in a single superior action” is preferable to “numerous individual suits brought by claimants.” *Sullivan*, 667 F.3d at 311-12 (internal quotation marks omitted).

The Class consists of over 20,000 Retired Players, as well as their Representative and Derivative Claimants. *See supra* Section I.E. Consolidated in this MDL are over 300 lawsuits representing the claims of about 5,000 Retired Players. In the absence of aggregate resolution, more lawsuits will surely follow. *See Prudential*, 148 F.3d at 316 (finding superiority satisfied because of the “sheer volume” of individual claims). These cases could result in decades of litigation at significant expense. *See* Am. Fairness Hr’g Tr. at 51:25-52:2 (Counsel for the NFL Parties noting: “The [NFL Parties] could have fought these claims, successfully fought these claims in [his] view for many, many years.”). Compensation would be uncertain, and many Retired Players with progressive neurodegenerative conditions would continue to suffer while awaiting relief.

Rule 23(b)(3) specifically directs a court to consider the “desirability . . . of concentrating the litigation of the claims in the particular forum,” and “class members’ interests in individually controlling the prosecution or defense of separate actions.” Fed. R. Civ. P. 23(b)(3).³⁹

³⁹ Rule 23 also requires consideration of “the extent and nature of any litigation concerning the controversy already begun” and “the likely difficulties in managing a class action.” Fed. R. Civ. P.

Because I currently oversee the MDL involving these cases and have coordinated pretrial proceedings, there is a unique advantage to class resolution by this Court. *See Diet Drugs*, 2000 WL 1222042, at *55 (noting that “from the perspective of judicial efficiency, there is a strong desirability in implementing a settlement in this MDL [] transferee court, the jurisdiction with the most individual and class actions pending”).

Finally, Class Members have not demonstrated that they have an interest in individually resolving their claims against the NFL Parties. Despite extensive notice and generous opportunity to opt out, only one percent of the Class elected to pursue separate litigation. *See supra* Section I.E; *infra* Section III; *see also Warfarin*, 391 F.3d at 534 (finding superiority even though some plaintiffs had “significant individual claims” because they had the opportunity to opt out); *Community Bank*, 418 F.3d at 309 (same). Thus, the superiority requirement is satisfied.

In conclusion, I will certify the Class because the requirements of Rule 23(a) and 23(b)(3) are met.

23(b)(3). The Advisory Committee notes to Rule 23 indicate that the extent and nature of ongoing litigation ties into class members’ interests in individually controlling their own claims. *See Newberg on Class Actions* § 4:70 (5th ed.). Additionally, because this is a settlement, there are no manageability concerns. *See Amchem*, 521 U.S. at 620.

III. Notice⁴⁰

Because Class Counsel seek simultaneous certification of the proposed Class and approval of the proposed Settlement, notice must satisfy both the requirements of Rule 23(c)(2)(B) and Rule 23(e)(1). *See Carlough v. Amchem Prods., Inc.*, 158 F.R.D. 314, 324 (E.D. Pa. 1993).

For a class certified under Rule 23(b)(3), “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed R. Civ. P. 23(c)(2)(B). Rule 23(c)(2)(B) provides:

The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Id.

Rule 23(e)(1) of the Federal Rules of Civil Procedure requires a district court to “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). “Rule 23(e) notice is designed to summarize the litigation and the settlement and to apprise class members of the right and opportunity to inspect the complete settlement

⁴⁰ Within ten days of Class Counsel moving for preliminary approval of the Settlement, the NFL Parties sent copies of the Class Action Complaint and the proposed Settlement, as well as a list of Class Members organized by state residence to the United States Attorney General, and to the Attorney General for each state, the District of Columbia, and the territories. *See* ECF No. 6501 at 2-3. Within ten days of the Preliminary Approval Date, the NFL Parties sent these same officials copies of this Court’s Preliminary Approval Order and Memorandum, copies of the Long-Form Notice and Summary Notice, and notice of the date, time, and location of the Fairness Hearing. *See id.* These mailings satisfy the notice requirements of the Class Action Fairness Act. *See* 28 U.S.C. § 1715(b). Because final approval of the Settlement will occur more than 90 days after the relevant Attorneys General received these materials, the timing requirements of the Class Action Fairness Act have also been satisfied. *See id.* § 1715(d).

documents, papers, and pleadings filed in the litigation.” *Prudential*, 148 F.3d at 327 (internal quotation marks omitted).

In addition to the requirements of Rule 23, the Due Process Clause of the Fourteenth Amendment requires that notice be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

The content of the Settlement Class Notice and the methods chosen to disperse it satisfy all three requirements.

A. Content of Class Notice

The content of the Long-Form Notice and Summary Notice satisfy the requirements of Rule 23 and due process. *See* Long-Form Notice, ECF No. 6093-1; Summary Notice, ECF No. 6093-2. Each was written in plain and straightforward language. The Long-Form Notice apprised all Class Members of: the nature of the action; the definition of the Class; the Class claims and issues; the opportunity to enter an appearance through an attorney at the Fairness Hearing; the opportunity to opt out of the Settlement; and the binding effect of a class judgment on Class Members under Rule 23(c)(3)(B). The Long-Form Notice also properly disclosed the date, time, and location of the Fairness Hearing.

Objectors contend that the notice materials “misleads [C]lass [M]embers about the basic compromise of the settlement” because they failed to inform Class Members that there is no compensation for Death with CTE for Retired Players who died after the Preliminary Approval Date.⁴¹ *Morey* Obj. at 38; *see also* *Miller* Obj. at 7-8; *Alexander* Obj. at 2-3, ECF No. 6237;

⁴¹ Before the parties amended the Settlement, the cutoff date for compensation for Death with CTE was the Preliminary Approval Date, July 7, 2014. *See* Settlement as of June 25, 2014, ECF No. 6073-2 § 6.3(f). The cutoff date is now the Final Approval Date. *See* Settlement § 6.3(f). Because amendment

Duerson Obj. at 29-30 (calling notice “misleading, at best—blatantly wrong, at worst”).

Objectors first argue that the Summary Notice is misleading because it neglects to mention the cutoff date for Death with CTE claims. *See* Morey Obj. at 38-40. The Summary Notice states that only “*certain* cases of chronic traumatic encephalopathy” receive Monetary Awards. Summary Notice at 1 (emphasis added). In context, this is more than adequate: none of the other Qualifying Diagnoses listed contain any type of limiting language. *Id.* Moreover, the purpose of the one-page Summary Notice is not to provide exhaustive information, but to alert Class Members to the suit and direct them to more detailed information. *See Varacallo v. Mass Mut. Life Ins. Co.*, 226 F.R.D. 207, 227 (D.N.J. 2005) (explaining that settlement notice is “designed only to be a summary of the litigation and the settlement and should not be unduly specific” (internal quotation marks omitted)). The Summary Notice does exactly that, with a large banner at the bottom of the page listing both a toll-free phone number and the URL of the Settlement Website.

Objectors unsuccessfully argue that the Long-Form Notice is also misleading. Objectors concede that that the Long-Form Notice states that compensation is limited to “diagnoses of Death with CTE prior to **July 7, 2014.**”⁴² Long-Form Notice at 6. Yet they maintain that this statement is misleading because it “does not outright disclose” that those who die after that date will not be compensated. Morey Obj. at 41. This is not enough to confuse a careful reader. *See In re Katrina Canal Breaches Litig.*, 628 F.3d 185, 199 (5th Cir. 2010) (“The choice of words, while less than one hundred percent accurate, does not render the notice so clearly misleading”); *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1104-05 (5th Cir. 1977) (noting notice need not “[be] perfectly correct in its form,” and instead that “[t]he standard [] is that the

of the Settlement occurred after the Fairness Hearing, the Settlement Class Notice, and the objections discussing it, refer to the Preliminary Approval Date.

⁴² *See supra* note 41.

notice . . . must contain information that a reasonable person would consider to be material in making an informed, intelligent decision” about whether to opt out); *Rodgers v. U.S. Steel Corp.*, 70 F.R.D. 639, 647 (W.D. Pa. 1976) (holding that notice is adequate when it “enable[s] reasonable and competent individuals to make an informed choice” and there is “no reason to believe . . . that the language of the tender notice and release forms must be reduced to a pabulum in order for [class members] to digest its import”).

Objectors further argue that the Long-Form Notice is confusing because the term “Death with CTE” appears several times without the accompanying cutoff date. *See* Morey Obj. at 43-44. Both the Summary Notice and the Long-Form Notice indicate that only “certain” cases of CTE are covered. *See* Summary Notice at 1; Long-Form Notice at 1.

Even if the Long-Form Notice were unclear, it repeatedly instructs readers to sources that can answer their questions. Like the Summary Notice, the Long-Form Notice contains a banner at the bottom of each page directing those with “Questions?” to call a toll-free support number or visit the Settlement Website. Warnings that the Long-Form Notice is only a summary and that readers should look to the Settlement for specific details appear five times in the Long-Form Notice.⁴³ *See* Long-Form Notice at 2, 6, 7, 15, 19 (“This Notice is only a summary of the Settlement Agreement and your rights. You are encouraged to carefully review the complete Settlement Agreement [on the Settlement Website].”).

Finally, Objectors argue that Co-Lead Class Counsel made misleading statements during interviews, news articles, and other media outreach. *See* Morey Obj. at 48-52. Any allegedly

⁴³ Amici contend that the notice materials are inadequate because they insufficiently disclose that Monetary Awards are subject to reduction because of applicable Medicare and Medicaid liens. *See* Mem. of Public Citizen at 11. Yet they concede that the Long-Form Notice discusses possible reductions based on “[a]ny legally enforceable liens on the award.” *See* Long-Form Notice at 11, ECF No. 6093-1. Because the Notice directly alerts Class Members of this possibility, and refers them to the Settlement where this topic is discussed in detail, the argument is meritless.

misleading statements made by Co-Lead Class Counsel are irrelevant, however, because only the Summary Notice and the Long-Form Notice are pertinent to the analysis of Rule 23 and due process. *See* Newberg on Class Actions § 16:20 (4th ed.) (“In reviewing the class notice to determine whether it satisfies [the notice] requirements, the court must look *solely to the language of the notices* and the manner of their distribution.” (emphasis added)); *Adams v. S. Farm Bureau Life Ins. Co.*, 493 F.3d 1276, 1286 (11th Cir. 2007) (same).

B. Distribution of Class Notice

No objection challenges the efforts undertaken to distribute notice. Class Counsel conducted a thorough campaign across several fronts that successfully apprised the Class of the suit. They retained three separate firms—Kinsella Media LLC (“Kinsella Media”), BrownGreer PLC (“BrownGreer”), and Heffler Claims Group (“Heffler”)—to design, implement, and distribute Settlement Class Notice. *See Nichols v. SmithKline Beecham Corp.*, No. 00-6222, 2005 WL 950616, at *10 (E.D. Pa. Apr. 22, 2005) (praising use of a professional firm experienced in class action notice).

First, BrownGreer constructed a master list of all readily identifiable Class Members and their addresses by aggregating 33 datasets of information from the NFL Parties, individual Member Clubs, sports statistics databases, and prior class actions involving Retired Players. *See* Decl. of Katherine Kinsella ¶ 7, ECF No. 6423-12 (“Kinsella Decl.”); Decl. of Orran L. Brown ¶¶ 8-14, 25-26, ECF No. 6423-5 (“Brown Decl.”). Kinsella Media used that master list to send a cover letter and a copy of the Long-Form Notice through first-class mail to the over 30,000 addresses identified. *See* Kinsella Decl. ¶¶ 8-10; *Zimmer Paper Prods., Inc. v. Berger & Montague, P.C.*, 758 F.2d 86, 90 (3d Cir. 1985) (“It is well settled that in the usual situation first-

. . . [and] greatly increased the possibility” that Class Members were informed of the litigation. *Prudential*, 148 F.3d 283, 327.

Within three weeks of the Preliminary Approval Date, the Settlement Website was launched, the toll-free number became available, and direct notice was mailed. *See* Kinsella Decl. ¶¶ 8-10, 27; Brown Decl. ¶ 37; Radetich Decl. ¶¶ 4-8. As a result, Class Members had approximately 90 days to determine whether to object or opt out. Courts routinely hold that between 30 and 60 days is a sufficient amount of time for class members to evaluate the merits of a settlement. *See In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 562 (D.N.J. 1997) (citing cases). Kinsella Media estimates that these programs reached 90% of Class Members. *See* Kinsella Decl. ¶ 48; *see also In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1061 (S.D. Tex. 2012) (notice plan that expert estimated would reach 81.4% of class was sufficient); *Alberton v. Commonwealth Land Title Ins. Co.*, No. 06-3755, 2008 WL 1849774, at *3 (E.D. Pa. Apr. 25, 2008) (direct notice projected to reach 70% of class plus publication in newspapers and internet was sufficient); *Grunewald v. Kasperbauer*, 235 F.R.D. 599, 609 (E.D. Pa. 2006) (direct mail to 56% of class and publication in three newspapers and on internet sites was sufficient).

In conclusion, the Settlement Class Notice clearly described of the terms of the Settlement and the rights of Class Members to opt out or object. Class Counsel’s notice program ensured that these materials reached those with an interest in the litigation. The requirements of Rule 23 and due process are satisfied.

C. Notice of Amendments to the Settlement

After the Fairness Hearing, the Parties made several amendments to the Settlement that I proposed in consideration of some of the issues raised by Objectors. *See* Parties’ Joint

Amendment. Class Members who opted out (“Opt Outs”) received adequate notice of these changes, and notification of Class Members is not required.

The Settlement allows Opt Outs the opportunity to rejoin the Class any time before the Final Approval Date. *See* Settlement § 14.2(c). After making amendments to the Settlement, Class Counsel informed all Opt Outs by first-class mail of the revisions to the Settlement and their right to revoke their requests to opt out. *See* Notice, Mar. 31, 2015, ECF No. 6500.

Because these changes improved the deal for Class Members without providing any concessions to the NFL Parties, an additional round of notice for Class Members is unnecessary. *See Prudential*, 962 F. Supp. at 473 n.10 (holding that class members “need not be informed of the Final Enhancements to the settlement because the Proposed Settlement is only more valuable with these changes. Plainly, class members who declined to opt out earlier, would not choose to do so now.”); *Trombley v. Bank of Am. Corp.*, No. 08-0456, 2013 WL 5153503, at *6 (D.R.I. Sept. 12, 2013) (“Because the compensation provided by the Revised Settlement Agreement is more beneficial to the class than the compensation offered by the original settlement agreement, no additional notice nor a second hearing is necessary.”); *Harris v. Graddick*, 615 F. Supp. 239, 244 (M.D. Ala. 1985) (finding new notice unnecessary when “plaintiff class [was] in no way impaired by the amendment”).

IV. Final Approval of the Settlement

A class action cannot be settled without court approval, based on a determination that the proposed settlement is fair, reasonable, and adequate. *See Prudential*, 148 F.3d at 316; Fed. R. Civ. P. 23(e)(2).

“[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged.” *Warfarin*, 391 F.3d at 535 (citing *GM Trucks*, 55 F.3d at 784). These

(internal quotation marks omitted). This role requires special rigor “where settlement negotiations precede class certification, and approval for settlement and certification are sought simultaneously.” *Warfarin*, 391 F.3d at 534. The fiduciary obligation “is designed to ensure that class counsel has demonstrated sustained advocacy throughout the course of the proceedings and has protected the interests of all class members.” *Prudential*, 148 F.3d at 317 (internal quotation marks omitted).

A. The Presumption of Fairness

The Third Circuit applies “an initial presumption of fairness . . . where: ‘(1) the settlement negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.’” *Warfarin*, 391 F.3d at 535 (quoting *Cendant*, 264 F.3d at 232 n.18 (3d Cir. 2001)). Each factor is satisfied.

At every stage of the proceedings, Class Counsel vigorously pursued Class Members’ rights at arm’s length from the NFL Parties. As Judge Phillips notes, “[t]he negotiations were intense, vigorous, and sometimes quite contentious. At all times the talks were at arm’s length and in good faith. There was no collusion.” Phillips Supp. Decl. ¶ 4; *see also* Phillips Decl. ¶¶ 2, 5-7, 11; *In re Cigna Corp. Sec. Litig.*, No. 02-8088, 2007 WL 2071898, at *3 (E.D. Pa. July 13, 2007) (agreement presumptively fair in part because “negotiations for the settlement occurred at arm’s length, as the parties were assisted by a retired federal district judge who . . . served as a mediator”). The Parties tabled discussion of attorneys’ fees until after they reached an agreement in principle, and the Settlement provides that attorneys’ fees will be paid out of a fund that is separate from the funds available to Class Members. *See* Phillips Supp. Decl. ¶ 19; Settlement § 21.1.

As discussed more thoroughly in Section IV.B.iii, Class Counsel were aware of the strengths and weaknesses of their case through informal discovery. Class Counsel created and maintained a comprehensive database of claims and symptoms of thousands of individual MDL Plaintiffs. *See Seeger Decl.* ¶ 20. Class Counsel also retained numerous medical experts to analyze issues of general and specific causation. When settlement negotiations began, Class Counsel’s strategy “reflected a sound appreciation of the scientific issues” and an “aware[ness] of mainstream medical literature.” *Phillips Supp. Decl.* ¶ 8; *see also In re Processed Egg Prods. Antitrust Litig.*, 284 F.R.D. 249, 267 (E.D. Pa. 2012) (applying presumption in part because “although no formal discovery was conducted . . . [class counsel] conducted informal discovery, including, *inter alia*, independently investigating the merits”).

Additionally, Class Counsel have decades of experience in these matters. Co-Lead Class Counsel, Subclass Counsel, and Class Counsel collectively have served as class counsel or as members of leadership committees in over 170 class actions, mass torts, and complex personal injury suits. *See Seeger Decl.* ¶¶ 2-4; *Levin Decl.* ¶ 2; *Nast Decl.* ¶ 2.

Finally, as discussed in greater detail in Section IV.B.ii, the Class has tacitly endorsed the Settlement. Estimates indicate that Class Counsel reached over 90% of Class Members through direct mail and indirect advertisements. Furthermore, major newspapers and television programs consistently discussed the Settlement and its terms. Given this publicity, an opt-out and objection rate of approximately 1% each reflects positively on the Settlement. *See Processed Egg Prods.*, 284 F.R.D. at 269 (applying presumption of fairness when 1.14% of class opted out, noting that the opt-out rate was “virtually *di minimis*”).

Therefore, the presumption of fairness applies.

Absent settlement, Class Members would have to conclusively establish what and when the NFL Parties knew about the risks of head injuries. This would require voluminous production from the NFL Parties, and time to sort through decades of records. Non-party discovery would be inevitable; Class Members would seek documents from individual NFL Member Clubs. To fully investigate scientific causation, the Parties would have to continue to retain costly expert witnesses. *See Prudential*, 148 F.3d at 318 (noting necessity of “several expert witnesses” supported factor). In turn, the NFL Parties would seek discovery about the medical history of 20,000 Retired Players. *See GM Trucks*, 55 F.3d at 812 (concluding that the need for class discovery by the defendants “into the background of the six million vehicles owned by class members” pointed towards settlement).

Finally, continued motion practice in this MDL would be burdensome, expensive, and time consuming. For example, the Parties likely would seek to exclude each other’s scientific evidence, and a battle of the experts would ensue.

All the while, Retired Players with Qualifying Diagnoses would continue to suffer while awaiting uncertain relief. *See Prudential*, 148 F.3d at 318 (noting “trial . . . would be a long, arduous process requiring great expenditures of time and money” and that “such a massive undertaking clearly counsels in favor of settlement”); *Warfarin*, 391 F.3d at 536. Class Representative Kevin Turner, who suffers from ALS, is a sobering example. Between the Preliminary Approval Date and the Fairness Hearing, Turner’s symptoms worsened to the point that he was unable to attend the Fairness Hearing because he can no longer breathe or eat without assistance. *See Am. Fairness Hr’g Tr.* at 5:22-6:4 (noting Kevin Turner “has deteriorated to the point where he is now on a breathing—he needs assistance with his breathing and he’s got a feeding tube . . .”).

The complexity, expense, and likely duration of the litigation weigh in favor of approving the Settlement.

ii. The Reaction of the Class to the Settlement

This factor “attempts to gauge whether members of the class support the settlement” and to use their opinions as a proxy for the settlement’s fairness. *Prudential*, 148 F.3d at 318. Courts look “to the number and vociferousness of the objectors,” while “generally assum[ing] that silence constitutes tacit consent to the agreement.” *GM Trucks*, 55 F.3d at 812 (internal quotation marks omitted). The Class has tacitly consented to this Settlement.

“[A] combination of observations about the practical realities of class actions has led a number of courts to be considerably more cautious about inferring support from a small number of objectors to a sophisticated settlement.” *Id.* In this case, however, so many Class Members were intimately aware of the Settlement that an inference of support from silence is sound. Class Counsel provided an estimated 90% of Class Members with notice through direct mail and a variety of secondary publications. *See supra* Section III.B. Substantial and sustained media coverage notified the entire country, not just Class Members, of the Settlement’s terms. *See supra* Section III.B.

Class Counsel’s records confirm Class Members’ active engagement. Since the Preliminary Approval Date, the Settlement Website has received 62,989 unique visitors, and the Settlement’s toll-free hotline received 4,544 calls. Brown Decl. ¶ 43; Kinsella Decl. ¶ 28. 2,302 callers requested to speak to a live operator, and received 140 hours of personal support. Radetich Decl. ¶ 9. 3,175 website visitors and 1,800 callers signed up to receive additional information about the Settlement. Kinsella Decl. ¶ 26; Brown Decl. ¶ 43; Radetich Decl. ¶ 10.

Despite this, only approximately 1% of Class Members filed objections, and only approximately 1% of Class Members opted out.⁴⁴ These figures are especially impressive considering that about 5,000 Retired Players are currently represented by counsel in this MDL, and could easily have objected or opted out to pursue individual suits. For comparison, at least eight times as many Class Members registered to receive additional information about the Settlement as expressed formal dissatisfaction with its terms.

The reaction of the Class to the Settlement weighs in favor of approving the Settlement. *See, e.g., Prudential*, 148 F.3d at 318 (affirming district court's conclusion that class reaction was favorable when 19,000 out of 8,000,000 class members opted out and 300 objected); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-19 (3d Cir. 1990) (concluding that "response of the class members . . . strongly favor[ed] settlement" where roughly 10% of 281 class members objected); *Processed Egg Prods.*, 284 F.R.D. 249, 269 (E.D. Pa. 2012) (approving settlement with no objections and an opt-out rate of 1.14% from an original notice to 13,200 class members, which was "virtually *de minimis*").

iii. The Stage of the Proceedings and the Amount of Discovery Completed

This factor "captures the degree of case development that class counsel [had] accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating." *GM Trucks*, 55 F.3d at 813. The aim is to avoid settlement "at too incipient a stage of the proceedings." *Id.* at 810; *see also In re Oil Spill by Oil Rig Deepwater Horizon*, 910 F. Supp. 2d 891, 932 (E.D. La. 2012) *aff'd sub nom. In re Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014) ("*Deepwater Horizon Economic Loss*

⁴⁴ The Morey Objectors point out that some Retired Players criticized the Settlement in the media. *See* Morey Obj. at 59-60. Tellingly, however, only one of the seven Retired Players identified by the Morey Objectors opted out, and none of them objected. *See* Eighth Opt-Out Report of Claims Administrator Exs. 1-2, ECF Nos. 6507-1, 6507-2; NFL Parties' Mem. of Law in Supp. of Final Approval App. A.

Settlement”) (“Thus, the question is not whether the parties have completed a particular amount of discovery, but whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed” (internal quotation marks omitted)).

“The Third Circuit Court of Appeals has recognized that, even if a settlement occurs in an early stage of litigation, there are means for class counsel to apprise themselves of the merits of the litigation” *Processed Egg Prods.*, 284 F.R.D. at 270. Formal discovery is not necessary where other means of obtaining information exist. *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 211 (5th Cir. 1981) (“[W]e are not compelled to hold that formal discovery was a necessary ticket to the bargaining table.”). Despite this Court’s stay of discovery, Class Counsel adequately evaluated the merits of two dispositive issues in the case: preemption and scientific causation. *See Prudential*, 148 F.3d at 319 (finding no error with the district court’s conclusion that “use of informal discovery was especially appropriate . . . because the Court stayed plaintiffs’ right to formal discovery for many months, and because informal discovery could provide the information that plaintiffs needed” (internal quotation marks omitted)).

First, the Parties completed full, adversarial, briefing about whether the Retired Players’ Collective Bargaining Agreements preempt their negligence and fraud claims. *See Pet Food*, 2008 WL 4937632, at *14 (factor satisfied when “Plaintiffs . . . performed an extensive analysis of the legal claims”); *cf. GM Trucks*, 55 F.3d at 814 (concluding stage of proceedings factor weighed against settlement approval where there was “little adversarial briefing on either class status or the substantive legal claims.”). The NFL Parties’ motions to dismiss remain pending, and have the potential to eliminate all or a majority of Class Members’ claims. Because preemption is a legal question, further discovery would not have increased Class Counsel’s

understanding of this issue. *Cendant*, 264 F.3d at 236 (noting when viability of defense “turns more on *legal considerations than on factual development* [] it does not substantially affect [objectors’] claim that more discovery was needed” (emphasis added) (citation omitted)); *Briggs v. Hartford Fin. Servs. Grp., Inc.*, No. 07-5190, 2009 WL 2370061, at *11, 13 (E.D. Pa. July 31, 2009) (noting that “counsel could reasonably estimate the strength and value of the case . . . based on an assessment of Pennsylvania law” in part because of a “threshold” legal issue).

This preemption research occurred before the Parties began settlement discussions, and influenced their strategy during negotiations. *See* Phillips Supp. Decl. ¶ 20 (“Ever present in the minds of the parties . . . were the potential risks of litigation . . . [including] Defendants’ preemption motions . . .”).

Second, Class Counsel had an adequate appreciation of the scientific issues relating to causation. Class Counsel constructed a dataset to catalogue the cognitive impairment of thousands of MDL Plaintiffs. *See* NFL Parties’ Actuarial Materials ¶ 16; Seeger Decl. ¶ 20. From there, Class Counsel retained multiple medical, neurological, neuropsychological, and actuarial experts to both interpret this data and the science underlying these injuries. *See* Seeger Decl. ¶ 30. Class Counsel’s research occurred prior to settlement negotiations, and played a vital role in their negotiation strategy. *See id.* ¶¶ 20, 22; Phillips Supp. Decl. ¶ 5.

Like the legal authorities on preemption, the scientific literature discussing repetitive mild traumatic brain injury is publicly available. Formal discovery, or discovery from the NFL Parties, would not have enhanced Class Counsel’s position on causation. *Pet Food*, 2008 WL 4937632 at *12, 14 (factor satisfied when “informal discovery, including extensive consultation with experts” occurred with respect to “complex medical and toxicological issues”).

Objectors focus narrowly on the lack of discovery concerning the NFL Parties' conduct, ignoring preemption and causation to argue that Class Counsel lacked an adequate appreciation of the merits of the case before negotiating. *See* Morey Obj. at 55 (noting that "Class Counsel appear to have conducted *no discovery*" and that "[t]he absence of discovery is particularly glaring because the [Class Action Complaint] alleges fraud and negligent concealment, where the best evidence is likely in the Defendants' hands").⁴⁵ However, proof that the NFL Parties believed concussions to be harmful would not help Class Members remain in federal court if their CBAs required them to submit their claims to an arbitrator.

Objectors rely heavily on *GM Trucks* to support their argument that insufficient discovery occurred here. *GM Trucks*, however, involved far more nascent proceedings. Only four months separated the filing of the consolidated complaint from the filing of the proposed Settlement. *See GM Trucks*, 55 F.3d at 813. By contrast, this case involved over ten months of settlement negotiations overseen by both a mediator and a special master. Class counsel in *GM Trucks* had neither "conducted significant independent discovery," nor "retained their own experts." *Id.* at 813-14. Both occurred here.

In sum, Class Counsel were intimately aware of the potential limitations of their case with respect to two dispositive issues as they entered settlement negotiations. The stage of the proceedings and the amount of discovery completed weigh in favor of approving the Settlement.

iv. **The Risks of Establishing Liability and Damages**

The next two *Girsh* factors consider the risks of establishing liability and damages should the case go to trial. Because these two *Girsh* factors are closely related, they are addressed together. The analysis of these factors "need not delve into the intricacies of the merits of each side's

⁴⁵ The same Objector, several pages later, argues that "[t]he publicly available facts show that the NFL was aware of its responsibility to protect its players." Morey Obj. at 61.

arguments.” *Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 115 (E.D. Pa. 2005); *see also Diet Drugs*, 2000 WL 1222042, at * 61 (acknowledging that “the risks of establishing liability and damages are readily apparent” and “not[ing] several obstacles that [plaintiffs] would have to overcome” to recover). These factors are satisfied because Class Members face stiff challenges surmounting the issues of preemption and causation. Other legal issues also weigh in favor of approving this Settlement.

The NFL Parties’ motions to dismiss based on preemption under § 301 of the LMRA remain pending. The NFL Parties argue that Class Members’ claims must be dismissed because they would require a judge to interpret provisions of the Retired Players’ Collective Bargaining Agreements, many of which address player health and safety. If the NFL Parties prevailed on their motions, many, if not all, of Class Members’ claims would be dismissed.

Other courts have accepted the NFL Parties’ preemption arguments. Many of the cases transferred into this MDL were originally filed in state court. The NFL Parties removed these cases to federal court on the basis of federal question jurisdiction under § 301 of the LMRA. When the plaintiffs in these actions sought to remand, the NFL Parties made the same arguments in support of jurisdiction that they assert in their motions to dismiss: that the former players’ tort claims require interpretation of players’ CBAs. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987) (noting that § 301 preemption “converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule”) (internal quotation marks omitted)).

For example, in *Duerson v. National Football League*, Retired Player David Duerson’s representative alleged that the NFL Parties “fail[ed] to educate players about the risks of concussions and the dangers of continuing to play after suffering head trauma.” No. 12-2513,

2012 WL 1658353, at *1, 4, 6 (N.D. Ill. May 11, 2012). The court denied Duerson's motion to remand because resolving his claims would implicate provisions of the CBAs that require player notice if the player possessed an injury that could be exacerbated by returning to the field. Similarly, in *Maxwell v. National Football League*, the court denied Retired Player Vernon Maxwell's motion to remand because resolving his claims would implicate provisions of the CBAs that give team physicians "primary responsibility" for diagnosing player injuries. Order Den. Pls.' Mot. to Remand at 1-2, *Maxwell*, No. 11-8394, ECF No. 58 (C.D. Cal. Dec. 8, 2011); *see also* Order Den. Pls.' Mot. to Remand at 1-2, *Pear v. Nat'l Football League*, No. 11-8395, ECF No. 61 (C.D. Cal. Dec. 8, 2011); Order Den. Pls.' Mot. to Remand at 1-2, *Barnes v. Nat'l Football League*, No. 11-8396, ECF No. 58 (C.D. Cal. Dec. 8, 2011); *Smith v. Nat'l Football League Players Ass'n*, No. 14-1559, 2014 WL 6776306, at *8 (E.D. Mo. Dec. 2, 2014) (finding negligent misrepresentation claims relating to concussive injury preempted based on provision in CBA that also bound the NFL).⁴⁶

Based on similar reasoning, other courts have outright dismissed claims involving other injuries allegedly resulting from NFL Football. In *Stringer v. National Football League*, Retired Player Korey Stringer's representative alleged that the NFL Parties had a duty "to use ordinary care in overseeing, controlling, and regulating practices, policies, procedures, equipment, working conditions and culture of the NFL teams . . . to minimize the risk of heat-related illness." 474 F. Supp. 2d 894, 899 (S.D. Ohio 2007). The court granted summary judgment for

⁴⁶ Objectors rely exclusively on *Green v. Ariz. Cardinals Football Club LLC*, which granted a motion to remand on the same issue. No. 14-0461, 2014 WL 1920468, at *3 (E.D. Mo. May 14, 2014). *Green* is an outlier, and is insufficient to show that there is no litigation risk on this issue. *See Prudential*, 148 F.3d at 319-20 (holding fourth and fifth *Girsh* factors satisfied in part because district court took notice of adverse outcome in one similar case against the defendant); *Aetna*, 2001 WL 20928, at *9 (noting that "[i]f further litigation presents a realistic risk of dismissal," then "plaintiffs have a strong interest to settle the case early").

the NFL Parties because it found that these claims “must be considered in light of pre-existing contractual duties imposed by the CBA on the individual NFL clubs concerning the general health and safety of the NFL players.” *Id.* at 910. In *Dent v. National Football League*, the court dismissed claims that the NFL Parties negligently and fraudulently concealed the dangers of repeated painkiller use to allow players to return to the field. Order at 7-10, 20-21, *Dent v. Nat’l Football League*, No. 14-2324, ECF No. 106 (N.D. Cal. Dec. 17, 2014). The court held that the claims were encompassed by the CBAs because it was “through [] CBAs [that] players’ medical rights have steadily expanded.” *Id.* at 7, 12.

Class Members also face serious hurdles establishing causation. Though “[t]here has been widespread media coverage and speculation regarding the late-life or post-retirement risks of cognitive impairment in athletes who engaged in sports involving repetitive head trauma[,] . . . there has been very little in the way of peer-reviewed scientific literature involving data that suggests any such risk.” Christopher Randolph et al., *Prevalence and Characterization of Mild Cognitive Impairment in Retired National Football League Players*, 19 J. Int’l Neuropsychological Soc’y 873, 873 (2013), ECF No. 6422-7 (noting “the first attempt to systematically explore late-life cognitive impairments in retired NFL players” occurred in 2005); Paul McCrory et al., *Consensus Statement on Concussion in Sport: The 4th International Conference on Concussion in Sport Held in Zurich, November 2012*, 47 Brit. J. Sports. Med. 250, 257 (2013), ECF No. 6422-8 (“*Consensus Statement on Concussions*”) (noting that “the speculation that repeated concussion or subconcussive impacts cause CTE remains unproven”).

A consensus is emerging that repetitive mild brain injury is associated with the Qualifying Diagnoses. Dr. Yaffe Decl. ¶ 13; Decl. of Dr. Kenneth Fischer ¶¶ 6-7, 9, ECF No. 6423-17 (“Dr. Fischer Decl.”); Decl. of Dr. Christopher Giza ¶ 21, ECF No. 6423-18 (“Dr. Giza Decl.”); Decl.

of Dr. David Hovda ¶ 25, ECF No. 6423-19 (“Dr. Hovda Decl.”). However, the available research is not nearly robust enough to discount the risks that Class Members would face in litigation. The scientific community has long recognized the existence of multiple categories of traumatic brain injury. *See* Dr. Yaffe Decl. ¶ 41 (noting scientists “categorize[] TBI into three categories: severe, moderate, and mild”). However, investigation into repetitive mild TBI, typical of Retired Players, is relatively new. Most studies linking head injury with Qualifying Diagnoses have been limited to serious brain injuries, often involving a loss of consciousness. *See* Dr. Yaffe Decl. ¶¶ 42-45. Results regarding the effect of repetitive mild TBI have been more mixed. *See* Yi-Kung Lee et al., *Increased Risk of Dementia in Patients with Mild Traumatic Brain Injury: A Nationwide Cohort Study*, 8 PLOS ONE 1, 1 (2013), ECF No. 6422-26 (“A [s]ystematic review has found that [Alzheimer’s Disease] was associated with moderate and severe TBI, but not with mild TBI unless there was loss of consciousness”); *id.* at 7 (“A history of severe and moderate TBI increased the risk of dementia, but there was no significant risk of dementia . . . in those with mTBI.”); M. Anne Harris et al., *Head Injuries and Parkinson’s Disease in a Case-Control Study*, 70 Occupational & Env’tl. Med. 839, 839 (2013), ECF No. 6422-27 (“Severe injuries and those entailing loss of consciousness seem more strongly associated with [Parkinson’s Disease].” (footnotes omitted)); Inst. of Med. of the Nat’l Acads., *Sports-Related Concussions in Youth: Improving the Science, Changing the Culture* (2013), at 2, ECF No. 6422-10 (“*Changing the Culture*”) (“[I]t remains unclear whether repetitive head impacts and multiple concussions sustained in youth lead to long-term neurodegenerative diseases”). Complicating matters, scientists have only recently begun to standardize the criteria used to discuss the differing levels of severity of TBI. Therefore, it is difficult to determine any one study’s utility to Class Members’ case. *See* Dr. Yaffe Decl. ¶ 41.

Given this background, continued litigation would be a risky endeavor. Even if Class Members ultimately prevailed, a battle of the experts would be all but certain. *See Sullivan*, 667 F.3d at 322 (“find[ing] no flaw in the District Court’s decision that the additional risk in establishing damages counsel[ed] in favor of approval of the settlement” when “proceedings would likely entail a battle of the experts” (internal quotation marks omitted)); *Prudential*, 962 F. Supp. at 539 (“[A] jury’s acceptance of expert testimony is far from certain, regardless of the expert’s credentials. And, divergent expert testimony leads inevitably to a battle of the experts.”).

Even if Class Members could conclusively establish general causation, the problem of specific causation remains. Class Members argue that the cumulative effect of repeated concussive blows Retired Players experienced while playing NFL Football led to permanent neurological impairment. Yet the overwhelming majority of Retired Players likely experienced similar hits in high school or college football before reaching the NFL. Brain trauma during youth, while the brain is still developing, could also play a large role in later neurological impairment. *See* Inst. of Med., *Changing the Culture* at 2 (“[L]ittle research has been conducted specifically on changes in the brain following concussions in youth . . .”). Isolating the effect of hits in NFL Football from hits earlier in a Retired Player’s career would be a formidable task. *See id.* (“Currently, there is a lack of data concerning the overall incidence of sports-related concussions in youth, although the number of reported concussions has risen over the past decade.”).

Finally, in addition to preemption and causation risks, Class Members would face other legal barriers to successful litigation, such as affirmative defenses and risks establishing damages. For example, Retired Players would have to demonstrate that their claims would not be barred by the

relevant state's statute of limitations in order to proceed with litigation. This is especially true given that many of these players have been suffering, and may have been aware of their suffering for some time. Further, Class Members' recovery might be compromised by a state's comparative fault or contributory negligence regime. Football is an inherently violent sport and a voluntary activity. If a Retired Player contributed to his injury in any way, such as a particularly aggressive playing style or poor tackling form, he could see his award reduced or eliminated. *See* Dr. Hovda Decl. ¶ 18 (noting that "some risks for repeat concussion are bio-behavioral, that is, aggressive styles of play or poor playing style").

In sum, Class Members would face a host of challenges if they proceeded with litigation. The Settlement eliminates or mitigates each of these substantial risks. The risks of establishing liability and damages weigh strongly in favor of approving the Settlement.

v. The Risks of Maintaining the Class Action through Trial

This factor "measures the likelihood of obtaining and keeping a class certification if the action were to proceed to trial." *Warfarin*, 391 F.3d at 537. Because class certification is subject to review and modification at any time during the litigation, the uncertainty of maintaining class certification favors settlement. *See Zenith Labs., Inc. v. Carter-Wallace, Inc.*, 530 F.2d 508, 512 (3d Cir. 1976).

The Third Circuit, however, cautions that this factor is somewhat "toothless" when analyzing settlement class actions. *Prudential*, 148 F.3d at 321. "Because the district court always possesses the authority to decertify or modify a class that proves unmanageable, examination of this factor in the standard class action [] appear[s] to be perfunctory." *Id.* (noting "that after *Amchem* the manageability inquiry in settlement-only class actions may not be significant").

The risks of maintaining this Class Action through trial weigh in favor of approving the Settlement; however, this factor warrants only minimal consideration.

vi. The Ability of Defendants to Withstand a Greater Judgment

This factor assesses the ability of defendants to withstand a greater judgment, and is “most clearly relevant where a settlement in a given case is less than would ordinarily be awarded but the defendant’s financial circumstances do not permit a greater settlement.” *Reibstein v. Rite Aid Corp.*, 761 F. Supp. 2d 241, 254 (E.D. Pa. 2011). However, when there is no “reason to believe that [d]efendants face any financial instability[,] . . . this factor is largely irrelevant.” *Id.*; *see also Sullivan*, 667 F.3d at 323 (“[I]n any class action against a large corporation, the defendant entity is likely to be able to withstand a more substantial judgment, and, against the weight of the remaining factors, this fact alone does not undermine the reasonableness of the instant settlement.” (internal quotation marks omitted)).

This is not the case here. The NFL Parties do not claim that the Settlement is fair because they could not pay more. Rather, by uncapping the Monetary Award Fund and establishing adequate security, they have guaranteed that all Retired Players who receive Qualifying Diagnoses will be able to receive an award. *See Warfarin*, 391 F.3d at 538 (“[T]he fact that [defendant] could afford to pay more does not mean that it is obligated to pay any more than what . . . class members are entitled to under the theories of liability that existed at the time the settlement was reached.”).

The ability of the NFL Parties to withstand a greater judgment is a neutral factor.

vii. The Range of Reasonableness of the Settlement in Light of the Best Possible Recovery and in Light of All Attendant Risks of Litigation

In evaluating these factors, a Court must ask “whether the settlement represents a good value for a weak case or a poor value for a strong case.” *Warfarin*, 391 F.3d at 538. Put another way,

a court must compare “the amount of the proposed settlement” with “the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing.” *GM Trucks*, 55 F.3d at 806. The settlement must be judged “against the realistic, rather than theoretical, potential for recovery after trial.” *Sullivan*, 667 F.3d at 323 (internal quotation marks omitted).

The Settlement offers Monetary Awards of up to \$5 million for serious medical conditions associated with repeated head trauma. Retired Players whose symptoms worsen will receive Supplemental Monetary Awards to ensure that they receive the maximum possible compensation for their symptoms. Unlike recoveries achieved after continued litigation, these awards will be promptly available to Retired Players currently suffering. *See Prudential*, 962 F. Supp. at 537 (emphasizing that settlement “would afford plaintiffs relief months and perhaps years earlier than would be possible in a litigation environment”).

The Settlement allows Class Members to choose certainty in light of the risks of litigation. The Settlement eliminates the possibility that a Class Member’s claims could be arbitrated. It also eliminates the potentially dispositive issues of issues of general causation, specific causation, statutes of limitations, and other defenses. The Settlement insulates Class Members from the practical vagaries of litigation, including the particular judge, jury panel, and the skill of the attorneys involved. Because the MAF is uncapped, it ensures that all Class Members who receive Qualifying Diagnoses within the next 65 years will receive compensation. It ensures that all Retired Players with half of an Eligible Season credit have access to free baseline assessment examinations so that they may monitor their symptoms, and receive Qualifying Diagnoses more easily if their symptoms worsen. Finally, for Retired Players who believed they could fare better in litigation, there was a lengthy opt-out period. *See Diet Drugs*, 2000 WL 1222042, at *62

(“[T]he settlement . . . offers choice. Class members who wish to bear the risks of trial had an initial opt out right . . .”). In light of these benefits, Class Members receive fair value for their claims.

Objectors rely on *GM Trucks* to argue that the Settlement is unfair because it allegedly does not compensate CTE, which was “at the heart of the Class Action Complaint.” Morey Obj. at 69-70. In *GM Trucks*, the Third Circuit explained that “the relief sought in the complaint serves as a useful benchmark” in evaluating a settlement. 55 F.3d at 810. However, *GM Trucks* is distinguishable. In *GM Trucks*, the complaint alleged that the fuel tank design on certain pick-up trucks made them especially vulnerable to fires, and sought recall of, or repairs for, the trucks at issue. *GM Trucks*, 55 F.3d at 777-79. The settlement, however, only offered coupons towards the purchase of new trucks. In part, the Third Circuit vacated the settlement because the proposed coupons would do little to remove the dangerous trucks from the road, risking new injuries. *Id.* at 810 n.28. Here, Retired Players are at no further risk of injury; they are retired. The Settlement compensates the key harm alleged—the long term effects of repeated concussive hits—through medical monitoring and cash awards. Moreover, as discussed in depth *infra* Section V.A, Objectors’ claims that the Settlement ignores CTE are baseless.

The range of reasonableness factors weigh in favor of approving the Settlement.

C. The Prudential Factors

A court may also consider the additional factors identified by the Third Circuit in *In re Prudential Insurance Co. of America Sales Practices Litigation*, 148 F.3d 283 (3d Cir. 1998), when examining a settlement’s fairness. Unlike the mandatory *Girsh* factors, the *Prudential* factors are “permissive and non-exhaustive, ‘illustrat[ing] . . . [the] additional inquiries that in many instances will be useful for a thoroughgoing analysis of a settlement’s terms.’” *Baby*

Prods., 708 F.3d at 174 (quoting *Pet Food*, 629 F.3d at 350); *see also Processed Egg Prods.*, 284 F.R.D. at 268 (noting *Prudential* factors “are not essential or inexorable”).

Prudential asks a court to consider:

[1] the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; [2] the existence and probable outcome of claims by other classes and subclasses; [3] the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved—or likely to be achieved—for other claimants; [4] whether class or subclass members are accorded the right to opt out of the settlement; [5] whether any provisions for attorneys’ fees are reasonable; and [6] whether the procedure for processing individual claims under the settlement is fair and reasonable.

148 F.3d at 323-24.

The relevant *Prudential* factors weigh in favor of approving the Settlement. Class Counsel were able to make an informed decision about the probable outcome of trial. *See supra* Sections IV.B.iii-IV.B.iv; *infra* Section V.A; *Pet Food*, 2008 WL 4937632, at *24 (noting *Prudential* factors “are substantially similar to the factors provided in *Girsh*”). All Class Members had the opportunity to opt out. Finally, the claims process is reasonable in light of the substantial monetary awards available to Class Members, and imposes no more requirements than necessary. *See infra* Section V.E.

Whether any provisions for attorneys’ fees are reasonable is a neutral factor because Class Counsel have not yet moved for a fee award. *See Processed Egg Prods.*, 284 F.R.D. at 277 (holding fifth *Prudential* factor neutral when fee motion would be filed at a later date). Amici argue that “[t]he absence of a fee application . . . prevents a complete evaluation of the fairness of the settlement.” Mem. of Public Citizen at 7-8. Although there is no fee application pending, the Class Notice explained: the NFL Parties have agreed not to contest any award of attorneys’

fees and costs equal to or below \$112.5 million; there may be set-off provisions; and Class Members with individual counsel may see their awards diminished pursuant to retainer agreements. *See* Long-Form Notice at 11, 17.

At an appropriate time after Final Approval, Class Counsel will file a fee petition that Class Members will be free to contest. This is an accepted approach. *See* Newberg on Class Actions § 14:5 (5th ed.) (“In some situations, the court will give final approval to a class action settlement and leave fees and costs for a later determination.”); *In re Diet Drugs (Phentermine/Fenfluramine/ Dexfenfluramine) Prods. Liab. Litig.*, 582 F.3d 524, 534-35 (3d Cir. 2009) (upholding award of attorneys’ fees made six years after final approval of settlement); *In re Orthopedic Bone Screw Prods. Liab. Litig.*, No. 1014, 2000 WL 1622741, at * 1 (E.D. Pa. Oct. 23, 2000) (approving fee award three years after final approval). Once Class Counsel files their fee petition, Objectors will have an opportunity to submit objections to the proposed fee award. Pursuant to Rule 23(h), the Court will then schedule a hearing to evaluate the reasonableness of any such fees sought. *See Processed Egg Prods.*, 284 F.R.D. at 277. Objectors’ arguments regarding attorneys’ fees will be considered at that time.

The *Prudential* factors weigh in favor of approving the Settlement.

V. Responses to Specific Objections

Rule 23 does not require a settlement to be perfect, only “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); *see also Baby Prods.*, 708 F.3d at 173-74 (“The role of a district court is not to determine whether the settlement is the fairest possible resolution”). Settlements are negotiated compromises. Inherent in the negotiation process is “a yielding of the highest hopes in exchange for certainty and resolution,” no Class Member, nor the NFL Parties, will ever receive everything sought. *GM Trucks*, 55 F.3d at 806; *see also Hamlon v. Chrysler Corp.*, 150

F.3d 1011, 1027 (9th Cir. 1998) (“Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.”).

Objectors raised some valid concerns. At my request, the Parties addressed these concerns by revising the Settlement to improve the deal for Class Members. Retired Players who played overseas in NFL Europe now receive some Eligible Season credit. Notwithstanding the \$75 million funding cap to the BAP, all Retired Players with half of an Eligible Season credit are now entitled to a baseline assessment examination. The Settlement now compensates Death with CTE up until the Final Approval Date, instead of the Preliminary Approval Date. The Claims Administrator now has the authority to waive the \$1,000 appeal fee for those who demonstrate financial hardship. Finally, the Settlement eases the requirements for establishing proof of a Qualifying Diagnosis for Retired Players whose medical records have been lost because of *force majeure* type events. *See* Parties’ Joint Amendment.

A. Objections Related to CTE

The most commonly raised objection relates to the Settlement’s treatment of Chronic Traumatic Encephalopathy.⁴⁷ Objectors argue that CTE is the most prevalent, and thus most important, condition afflicting Retired Players—“the industrial disease of football.” *See* Am. Fairness Hr’g Tr. at 76:5-6; Chelsey Obj. at 3 (calling CTE the “NFL’s industrial disease”). Objectors contend that ending compensation for the disease on the Final Approval Date renders the Settlement hollow. *See* Armstrong Obj. at 17, ECF No. 6233 (CTE “is at the heart of this litigation); Duerson Obj. at 10 (“This has always been a CTE case.”); Chelsey Obj. at 7 (noting

⁴⁷ *See, e.g.*, Morey Obj. at 22-29; Miller Obj. at 4-5, ECF No. 6213; Jones Obj. at 3-4, ECF No. 6235; Alexander Obj. at 6-7, ECF No. 6237; Flint Obj. at 1, ECF No. 6347; Gilchrist Obj. at 1, ECF No. 6364; Jordan Obj. at 1, ECF No. 6375; Carrington Obj. at 2-3, ECF No. 6409.

lack of CTE compensation is “extraordinary”). Thus, Objectors argue that the Settlement cannot be fair, reasonable, and adequate unless it continues to compensate Retired Players with CTE.

Objectors are incorrect. Retired Players cannot be compensated for CTE in life because no diagnostic or clinical profile of CTE exists, and the symptoms of the disease, if any, are unknown. But the Settlement *does* compensate the cognitive symptoms allegedly associated with CTE. The studies relied on by Objectors indicate that the majority of Retired Players whose brains were examined would have received compensation under the Settlement if they were still alive. Furthermore, it is reasonable not to compensate the mood and behavioral conditions anecdotally associated with CTE. Indeed, limiting compensation to objectively measurable symptoms of cognitive and neuromuscular impairment is a key principle of the Settlement. The compensation provided for Death with CTE is reasonable because it serves as a proxy for Qualifying Diagnoses deceased Retired Players could have received while living. The Parties provided compensation for Death with CTE until the Final Approval Date because they recognized that Retired Players who died prior to final approval did not have sufficient notice that they had to obtain Qualifying Diagnoses. Finally, the Settlement recognizes that knowledge about CTE will expand, and requires the Parties to confer in good faith about possible revisions to the definitions of Qualifying Diagnoses based on scientific developments.

i. State of Scientific and Medical Knowledge of CTE

The study of CTE is nascent, and the symptoms of the disease, if any, are unknown. Chronic Traumatic Encephalopathy is a neuropathological diagnosis that currently can only be made post mortem.⁴⁸ Dr. Yaffe Decl. ¶ 55. This means no one can conclusively say that someone had CTE until a scientist looks at sections of that person’s brain under a microscope to see if abnormally phosphorylated tau protein (“abnormal tau protein”) is present, and if so whether it is present in a

⁴⁸ Objectors do not dispute this fact. *See supra* Section II.D.iii.

reportedly unique pattern.⁴⁹ *See id.*; Decl. of Dr. Julie Ann Schneider ¶ 22, ECF No. 6422-35 (“Dr. Schneider Decl.”).

Beyond identifying the existence of abnormal tau protein in a person’s brain, researchers know very little about CTE. They have not reliably determined which events make a person more likely to develop CTE. McCrory et al., *Consensus Statement on Concussions* at 257 (“[I]t is not possible to determine the causality or risk factors [for CTE] with any certainty. As such, the speculation that repeated concussion or subconcussive impacts cause CTE remains unproven.”). More importantly, researchers have not determined what symptoms individuals with CTE typically suffer from while they are alive. *See* Dr. Schneider Decl. ¶ 38; Dr. Hovda Decl. ¶ 25.

Arguably, these uncertainties exist because clinical study of CTE is in its infancy.⁵⁰ Only 200 brains with CTE have ever been examined, all from subjects who were deceased at the time

⁴⁹ Some scientists even dispute whether CTE is a unique neuropathology—that is, the extent to which tissue samples from CTE are distinct from tissue samples associated with other diseases. Abnormal tau protein is also a primary component of other neurodegenerative conditions such as Alzheimer’s Disease. Dr. Schneider Decl. ¶ 21. Even if CTE is a unique neuropathology, studies examining it have found significant differences among subjects, including where the abnormal tau protein typically accumulates in the brain. *Id.* ¶ 23.

⁵⁰ Objectors point out that researchers have been aware of CTE since the 1920s, previously labeling it “dementia pugilistica” or “punch drunk syndrome.” While this is true, the rigorous study necessary to understand the symptoms associated with CTE, or its prevalence, have not taken place. *See, e.g.*, Robert C. Cantu, *Chronic Traumatic Encephalopathy in the National Football League*, 61 *Neurosurgery* 223, 224 (2007), ECF No. 6201-11 (chronicling history of CTE research and admitting that “[t]he most pressing question to be answered concerns the prevalence of the problem” and that “[o]nly an immediate prospective study will determine the true incidence of this problem”); Philip H. Montenegro et al., *Clinical Subtypes of Chronic Traumatic Encephalopathy: Literature Review and Proposed Research Diagnostic Criteria for Traumatic Encephalopathy Syndrome*, 6 *Alzheimer’s Research & Therapy* 68, 70 (2014), ECF No. 6201-4 (“The scientific community also has become dramatically more aware of CTE since it was discovered in American football players.”). The studies of dementia pugilistica and punch drunk syndrome Objectors identify are the same type of limited case series reports as those discussed *infra* by Drs. McKee and Stern. As a result, these studies suffer from the same limitations and biases. *See Cantu, supra*, at 224 (noting several studies of boxers with CTE); *see also* Baugh et al., *Current Understanding of Chronic Traumatic Encephalopathy*, 16 *Current Treatment Options in Neurology* 306, 307 (2014), ECF No. 6201-4 (noting that “much of the scientific literature on CTE, to-date, is derived

the studies began. Dr. Schneider Decl. ¶ 25; Dr. Yaffe Decl. ¶ 68. This is well short of the of the sample size needed to understand CTE's symptoms with scientific certainty. Dr. Schneider Decl. ¶ 25. The studies that have occurred suffer from a number of biases intrinsic to their design that make it difficult to draw generalizable conclusions. *Id.* ¶¶ 24-25; Dr. Yaffe Decl. ¶¶ 56, 66.

Objectors principally rely on two studies: Ann McKee et al., *The Spectrum of Disease in Chronic Traumatic Encephalopathy*, 136 Brain 43 (2013), ECF No. 6201-2 ("McKee Study") and Robert Stern et al., *Clinical Presentation of Chronic Traumatic Encephalopathy*, 81 Neurology 1122 (2013), ECF No. 6201-4 ("Stern Study"). The McKee Study and the Stern Study are representative of both the broader literature and the limitations of current medical knowledge about CTE. *See* Dr. Schneider Decl. ¶¶ 26, 30; Dr. Fischer Decl. ¶ 11; Dr. Hovda Decl. ¶ 22.

The McKee Study and the Stern Study collectively examined the brains of 93 deceased subjects.⁵¹ Subjects were selected because they had a history of repetitive mild TBI. McKee Study at 45; Stern Study at 1123. In the McKee Study, 18 individuals without a history of repetitive mild TBI served as the control group; in the Stern Study, there was no control group. McKee Study at 45; Stern Study at 1127. The studies found abnormal tau protein accumulation indicative of CTE in the majority of the brains examined. From there, each study attempted to reconstruct the symptoms the subjects experienced during life by asking their family members to describe their behaviors before death. In the McKee Study, researchers only reconstructed the symptoms of about half of the subjects. *See* Dr. Schneider Decl. ¶ 31. Thus, the symptoms, if any, of half of the subjects during life remain unknown.

from clinicopathologic [sic] case series" and "early literature about the disease focused on the boxing population").

⁵¹ The McKee Study and the Stern Study both drew from the same bank of brains diagnosed with CTE. The McKee Study examined 85 brains. *See* McKee Study at 45. The Stern Study examined 36 brains, 28 of which had already been examined by the McKee Study. *See* Stern Study at 1123 & n.1.

Predictive, generalizable conclusions about CTE cannot be drawn from case reports such as these.⁵² *See* Dr. Giza Decl., ¶¶ 16-19; Dr. Yaffe Decl. ¶ 66. Because the studies examined only 93 brains, statistically significant conclusions are difficult to draw. Fed. Judicial Ctr., *Reference Manual on Scientific Evidence* 576 (3d ed. 2011) (“FJC Manual”) (noting that “[c]ommon sense” dictates that “a large enough sample of individuals must be studied”). Because the studies selected subjects with a history of repetitive brain injury, a selection bias exists that makes it difficult to infer the incidence of CTE in the general population, or even among athletes. FJC Manual at 583-84; Dr. Hovda, Decl. ¶ 21 (“[S]cience [] has yet to systematically study the presence or absence of CTE pathology in non-concussed men and women . . .”). Because the researchers had to rely on the subjects’ family members instead of medical professionals to determine how the subjects behaved during life, any attempt to tie the existence of abnormal tau protein to particular symptoms is suspect. FJC Manual at 586. Finally, the studies did not control for other potential risk factors for impairment that Retired Players commonly share, such as higher BMI, lifestyle change, age, chronic pain, or substance abuse. *See* McCrory et al., *Consensus Statement on Concussions* at 257 (“The extent to which age-related changes, psychiatric or mental health illness, alcohol/drug use or co-existing medical or dementing illnesses contribute to [CTE] is largely unaccounted for in the published literature.”); FJC Manual at 552 (“[I]t should be emphasized that *an association is not equivalent to causation.*”).

Because of these limitations, researchers do not know the symptoms someone with abnormal tau protein in his brain will suffer from during life. No diagnostic or clinical profile for CTE exists. Establishing the relationship between abnormal tau protein and specific symptoms requires long-term, longitudinal, prospective epidemiological studies in living subjects. *See* Dr.

⁵² All agree that Drs. McKee and Stern merit praise for their important and valuable scientific research. Objectors, however, overstate the results of their studies.

Yaffe Decl. ¶¶ 23-38, 59-67. For CTE, this long process is just beginning.⁵³ See McCrory et al., *Consensus Statement on Concussions* at 257 (“At present, the interpretation of causation in the modern CTE case studies should proceed cautiously.”).

ii. **Compensation of Symptoms Allegedly Associated with CTE**

Objectors allege that CTE is associated with both neurocognitive symptoms and mood and behavioral symptoms. The Settlement compensates Retired Players with the neurocognitive symptoms allegedly associated with CTE. The Settlement reasonably does not compensate Retired Players with the mood and behavioral symptoms allegedly associated with CTE—or any other Qualifying Diagnosis.

Relying on the McKee Study, Objectors allege that CTE progresses in four stages. In Stages I and II, the disease allegedly affects mood and behavior while leaving a Retired Player’s cognitive functions largely intact. Headache, aggression, depression, explosivity, and suicidality are common. See e.g., Morey Obj. at 22-23. Later in life, as a Retired Player progresses to Stages III and IV, severe memory loss, dementia, loss of attention and concentration, and impairment of language begin to occur. *Id.* at 23.

No definitive clinical profile yet exists for CTE, however, and the idea that CTE progresses in defined stages—or even that it is associated with the symptoms listed—has not been sufficiently tested in living subjects. See *supra* Section V.A.i; Dr. Hovda Decl. ¶ 20 (“CTE does not appear to advance in a predictable and sequential series of stages and progression of physical

⁵³ Alzheimer’s Disease provides a useful contrast and a cautionary lesson. Establishing the clinical profile of Alzheimer’s Disease took decades of studies of millions of subjects. See Dr. Hovda Decl. ¶ 24; Dr. Yaffe Decl. ¶ 68. Initial conclusions were not always correct. For example, the medical community once believed that changes in mood, specifically depression, were associated with Alzheimer’s Disease. This belief has now been thoroughly refuted. See Dr. Schneider Decl. ¶ 45.

those with CTE had comorbid disease, including Parkinson's Disease and Alzheimer's Disease. McKee Study at 61. The Stern Study excluded from consideration 35% of potential subjects because they had comorbid disease such as Alzheimer's Disease. Stern Study at 1123.

In sum, even if CTE is a unique disease, it inflicts symptoms compensated by Levels 1.5 and 2 Neurocognitive Impairment and is strongly associated with the other Qualifying Diagnoses in the Settlement. "[A]ccepting the findings in the McKee Study as accurate, at least 89% of the former NFL players studied by Dr. Stern, Dr. McKee, and their colleagues would have been compensated under the [S]ettlement while living." Dr. Yaffe Decl. ¶ 83.

Objectors also argue that the alleged mood and behavioral symptoms of early stage CTE, such as irritability, depression, and proclivity to commit suicide, are excluded from the Settlement.⁵⁴ Objectors are correct. The Settlement does not compensate these symptoms, a result not limited to CTE. Mood and behavioral symptoms do not entitle a Retired Player to any Qualifying Diagnosis. *See* Settlement § 6.6(b) ("Monetary Awards . . . shall compensate Settlement Class Members only in circumstances where a [Retired Player] manifests actual cognitive impairment and/or actual neuromuscular impairment . . .").

Excluding mood and behavioral symptoms from the Settlement is reasonable. While Objectors list many symptoms they believe are linked to head trauma, *see supra* note 34, the Settlement only provides compensation for serious, objectively verifiable neurocognitive and neuromuscular impairment with an established link to repetitive head injury. *See Deepwater Horizon Clean-Up Settlement*, 295 F.R.D at 156 (approving settlement that provided

⁵⁴ *See* Morey Obj. at 28-29; Armstrong Obj. at 19 ("By exclusively focusing on cognitive impairment, the same BAP program that is supposed to assist CTE sufferers by giving them a general dementia diagnosis excludes retirees suffering from mood, behavioral and other non-cognitive symptoms . . ."); Duerson Obj. at 20 ("This Settlement proposes to take care of the minority of retired NFL players who suffer from cognitive impairment, while leaving the majority of former players with nothing."); Flint Obj. at 1; Johnson Obj. at 2, ECF No. 6395.

compensation for conditions that had a medical basis to support causation and excluding those lacking that proof).

Class Members would face more difficulty proving that NFL Football caused these mood and behavioral symptoms than they would proving that it caused other symptoms associated with Qualifying Diagnoses. Mood and behavioral symptoms are commonly found in the general population and have multifactorial causation.⁵⁵ Dr. Schneider Decl. ¶ 39; Dr. Yaffe Decl. ¶¶ 75-76. Even if head injuries were a risk factor for developing these symptoms, many other risk factors exist. *See* Dr. Giza Decl. ¶ 14 (“While medical literature and clinical practice has *associated* psychological symptoms such as anxiety, depression, lability, irritability and aggression in patients with a history of concussions, this association has not led to *conclusive causation*.”).

Retired Players tend to have many other risk factors for mood and behavioral symptoms. For example, a typical Retired Player is more likely than an average person to have experienced sleep apnea, a history of drug and alcohol abuse, a high BMI, chronic pain, or major lifestyle changes. Dr. Schneider Decl. ¶ 39; Dr. Yaffe Decl. ¶¶ 75-76 (noting Retired Players’ risk factors for mood and behavioral issues, as well as for suicide); Dr. Giza Decl. ¶ 14. An individual Retired Player would have a difficult time showing that head impacts, as opposed to any one of these other factors, explain his symptoms. *See* Dr. Giza Decl. ¶ 14 (“It remains a challenge with an individual patient to discern whether or not these symptoms are a consequence of a head

⁵⁵ Objectors argue that the link between NFL Football and CTE would be easier to prove at trial because unlike the Qualifying Diagnoses, repetitive head trauma is a necessary condition for developing CTE. *See* Morey Obj. at 30; Chelsey Obj. at 10. As discussed *supra*, CTE studies to date have not had sufficient control groups to confirm this link. Moreover, other researchers dispute whether repetitive head trauma is a prerequisite for developing CTE. *See* McCrory et al., *Consensus Statement on Concussions* at 257 (“It was further agreed that CTE was not related to concussions alone or simply exposure to contact sports.”); Dr. Schneider Decl. ¶ 35. Moreover, even if head trauma were a necessary condition for CTE, the clinical profile is insufficiently developed to indicate whether specific mood disorders are associated with the neuropathology.

injury or associated with comorbidities (e.g., preexisting stress and social difficulties, learning disabilities, alcohol or drug abuse, etc.)”).

The Settlement simply does not entitle any Retired Player with mood and behavioral symptoms to any Qualifying Diagnosis.

iii. **Compensation of Death with CTE**

Objectors argue that even if the Settlement compensates the symptoms of CTE in living Retired Players, it unfairly treats those currently living with CTE less favorably than those with CTE who died before the Final Approval Date. They argue that there is no reason for Death with CTE compensation to end.⁵⁶ They also argue that Death with CTE benefits are comparatively more generous than the benefits for the remaining Qualifying Diagnoses, which compensate living Retired Players allegedly suffering from CTE. *See, e.g.*, Alexander Obj. at 2; Jones Obj. at 3-4, ECF No. 6235.

Sound reasons exist to distinguish between Retired Players with CTE who died before the Final Approval Date and those still alive after that date. A prospective Death with CTE benefit would incentivize suicide because CTE can only be diagnosed after death. One Retired Player wrote to the Court expressing this concern. E. Williams Obj. at 3, ECF No. 6345 (“Players diagnosed with CTE (living) today, have to kill themselves or die for their family to ever benefit.”).

More importantly, after the Final Approval Date, a living Retired Player does not need a death benefit because he can still go to a physician and receive a Qualifying Diagnosis. The Death with CTE benefit provides awards to families of Retired Players with compensable symptoms who died before the Settlement became operative, because neither Retired Players nor

⁵⁶ *See, e.g.*, Morey Obj. at 25-26; Miller Obj. at 4-5; Jones Obj. at 3-4; Moore Obj. at 3-4, ECF No. 6399; Carrington Obj. at 2-3.

their families had sufficient notice that they had to obtain Qualifying Diagnoses.⁵⁷ Thus, Death with CTE serves as a proxy for Qualifying Diagnoses deceased Retired Players *could* have received while living.

The Parties extended the Death with CTE benefit from the Preliminary Approval Date to the Final Approval Date because they recognized that Retired Players who died before final approval would not have had sufficient notice of the need to obtain Qualifying Diagnoses. *See* Parties' Joint Amendment at 4-5. Preliminary Approval of the Settlement and the accompanying notice program informed Retired Players of the need to seek testing in order to obtain Qualifying Diagnoses. However, the Parties did not expect that Retired Players could do so immediately. By final approval, living Retired Players should be well aware of the Settlement and the need to obtain Qualifying Diagnoses if sick. Thus, by final approval, there no longer is a need for Death with CTE to serve as a proxy for Qualifying Diagnoses.

Additionally, the benefits for Death with CTE are not more generous than the benefits for those who receive Qualifying Diagnoses while alive. *See, e.g.,* Morey Post-Fairness Hearing Supplemental Obj. at 19, ECF No. 6455 ("Morey Final Obj.") (arguing that "a class member with CTE would never be able to receive the same maximum compensation through a dementia diagnosis as could be received through a diagnosis of [D]eath with CTE . . ."). Monetary Award values for Death with CTE are higher than awards for Levels 1.5 and 2 Neurocognitive Impairment in the same age bracket because the alleged symptoms Death with CTE compensates

⁵⁷ Some Objectors contend that Qualifying Diagnoses are "not the kinds of conditions that could have been missed during the deceased players' lifetimes." Miller Supplemental Obj. at 2, ECF No. 6452. However, the NFL Parties allegedly encouraged a gladiator mentality, teaching players to ignore or minimize their injuries as a demonstration of strength. Am. MAC ¶¶ 62, 107. Many Retired Players allegedly retained that outlook well after retirement, refusing to seek medical help. *See, e.g.,* Stern Obj. at 1, ECF No. 6355 ("Like most men of his generation going to the doctor was for women and children not men . . ."); Hawkins Obj. at 9, ECF No. 6373 ("[T]heir pride and honor . . . [have] overshadowed their willingness to admit their past and current needs or their vulnerability.").

did not begin when Retired Players died. Retired Players living with Levels 1.5 and 2 Neurocognitive Impairment now know to seek Qualifying Diagnoses as early as possible. The Death with CTE awards reflect that deceased Retired Players with CTE did not have that opportunity.

iv. Development of Scientific and Medical Knowledge of CTE

Finally, Objectors argue that the Settlement unreasonably excludes CTE in light of expected scientific advances. Specifically, they argue that “CTE will be reliably detectable before death; within five to ten years, CTE will likely be diagnosed in the living.” Morey Obj. at 26; *see also* Morey Final Obj. at 12; Flint Obj. at 1, ECF No. 6347; Chelsey Obj. at 9; Carrington Obj. at 4, ECF No. 6409.

Objectors again overstate the conclusions of their experts. A reliable method of detecting CTE via buildup of abnormal tau protein during life may well be available in the next decade, but the longitudinal epidemiological studies necessary to build a robust clinical profile will still take a considerable amount of time. *See* Dr. Schneider Decl. ¶ 47 (noting “the presence of a biomarker for a protein does not currently tell us whether an individual is exhibiting symptoms or the likelihood that he will experience symptoms”); Dr. Yaffe Decl. ¶ 77 (noting that even an FDA approved test “does not mean that we will soon understand what causes CTE or the diagnostic profile of CTE” and that “[i]t will take many years before science can fully understand these issues”). The Settlement compensates symptoms that cause Retired Players to suffer, not the presence of abnormal tau protein (or any other irregular brain structure) alone. *See* Settlement § 6.6(b) (“Monetary Awards . . . shall compensate Settlement Class Members only in circumstances where a [Retired Player] manifests actual cognitive impairment and/or actual neuromuscular impairment . . .”).

Even if Objectors are correct, and researchers ultimately determine that CTE causes the mood and behavioral symptoms they allege, the Settlement will still be reasonable. As discussed *supra*, the decision to compensate only cognitive and neuromuscular impairment across all Qualifying Diagnoses is justified. Those symptoms tend to be more serious and more easily verifiable than mood and behavioral symptoms. *See supra* Section V.A.ii.

The Monetary Award Fund lasts for 65 years; researchers may learn more about CTE and head trauma in that time. Recognizing this, the Settlement requires the Parties to meet at least every ten years and confer in good faith about possible modifications to the definitions of Qualifying Diagnoses. *See* Settlement § 6.6(a).

Objectors argue that this is an empty benefit because the NFL Parties must consent to any prospective changes. *See e.g.*, Armstrong Obj. at 27 (“[I]f the NFL unilaterally does not want to accept a new method of detecting CTE, for example, it will not be required to do so.”); Utecht Obj. at 7-8. While this is true, the process is subject to judicial oversight, and the NFL Parties stipulated that they will not withhold their consent in bad faith. *See* Am. Fairness Hr’g Tr. at 16:16-17:8 (Counsel for the NFL Parties agreeing that “modifications to the settlement” will “in good faith . . . be implemented”). Independently, the Settlement requires the NFL Parties to implement the entire agreement in good faith. Settlement § 30.11 (“Counsel for the NFL Parties will undertake to implement the terms of this Settlement Agreement in good faith.”); *id.* § 26.1 (“The Parties will cooperate, assist, and undertake all reasonable actions to accomplish the steps contemplated by this Settlement . . .”).

B. Objections to Monetary Awards

i. Definitions of Levels 1.5 and 2 Neurocognitive Impairment

To receive a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment through the BAP,⁵⁸ a Retired Player must perform 1.7-1.8 standard deviations worse than his expected level of pre-impairment (“premorbid”) functioning in two cognitive domains tested by the Test Battery, and exhibit mild functional impairment consistent with the National Alzheimer’s Coordinating Center’s Clinical Dementia Rating (“CDR”) scale. Settlement Ex. 1, at 2; *id.* Ex. 2, at 5. Level 2 Neurocognitive Impairment requires a performance 2 standard deviations worse than a Retired Player’s expected premorbid functioning, and moderate functional impairment on the CDR scale. *Id.* Ex. 1, at 3; *id.* Ex. 2, at 5. A diagnosis of Level 1 Neurocognitive Impairment, which triggers BAP Supplemental Benefits as opposed to a Monetary Award, occurs when a Retired Player performs 1.5 standard deviations worse than his expected functioning, and exhibits questionable functional impairment on the CDR. *Id.* Ex. 1, at 1; *id.* Ex. 2, at 5.

Objectors contend that these cutoffs are “unreasonably high” and will prevent the compensation of many Retired Players whom physicians typically would diagnose with dementia. Morey Obj. at 71-72; *see also* Johnson Obj. at 2, ECF No. 6395 (“I feel the bar should be lowered even more below the standard 1.0 or 1.5 . . .”). These concerns are misguided.

Both the cognitive and functional cutoffs are drawn directly from well-established sources. The Neurocognitive Disorders section of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a universally recognized classification and diagnostic tool, divides neurocognitive disorders into mild and major disorders based on the severity of the

⁵⁸ Retired Players may also receive diagnoses of Levels 1.5 and 2 Neurocognitive Impairment outside the BAP, but the diagnosing physician must use similar diagnostic criteria. *See* Settlement Ex. 1, at 2-3.

impairment. *See* Dr. Kelip Decl. ¶ 21. Major disorders require impairment 2 or more standard deviations below a person’s expected premorbid capabilities. *Id.* ¶ 22. When this type of impairment extends beyond a single cognitive domain, it corresponds with a diagnosis of moderate dementia. *Id.* Mild disorders fall between 1 and 2 standard deviations below premorbid expectations. Empirical research demonstrates that 1.5 standard deviations below population norms is a relevant boundary—it substantially increases the likelihood of progression from a mild disorder to a major one. *Id.* ¶ 23.

Thus, the levels of neurocognitive impairment recognized by the Settlement are empirically tied to the cutoffs in the DSM-5.⁵⁹ Level 1 triggers BAP Supplemental Benefits because Retired Players with that score risk progressing from mild cognitive impairment to dementia. Level 2 matches the DSM-5’s definition of moderate dementia.⁶⁰ Level 1.5 includes early dementia and begins at the midway point between Level 1 and moderate dementia.⁶¹

Likewise, the functional impairment criteria are directly adopted from the CDR scale. The CDR is a highly validated test for functional impairment associated with dementia. *See* Keith Wesnes, *Clinical Trials in Which The CDR System Has Been Employed to Detect Enhancements in Cognitive Function* (Feb. 2013), available at <http://bracketglobal.com/sites/default/files/>

⁵⁹ One Objector argues that the Settlement is “vague, ambiguous, and/or not sufficiently disclosed” because, among other things, the user manual participating physicians will receive setting out the specific cutoff scores for each test within the Test Battery has not been disclosed. Alexander Obj. at 4-5. This objection is overruled because the methodology is sufficiently clear from the Settlement and the record.

⁶⁰ Objectors argue that “it is not common for dementia patients to score consistently more than two standard deviations below healthy controls.” Dr. Stern Decl. ¶ 50, ECF No. 6201-16. The Settlement’s algorithm, however, recognizes that “[p]eople with neurocognitive impairment and dementia exhibit a range of scores on neuropsychological testing.” Decl. of Dr. Richard Hamilton ¶ 17, ECF No. 6423-25. While “some of [the Test Battery’s] scores must be low,” others “can be in the average range (or even above average),” yet still qualify a Retired Player for a Monetary Award. *Id.*

⁶¹ Objectors provide affidavits from eight physicians indicating that they are “not aware of the use of the diagnostic or classification categories” of Levels 1, 1.5, and 2 Neurocognitive Impairment anywhere in the medical community. *See* Morey Final Obj. Exs. 3, 5-11. This is irrelevant. Although the precise terms are unique to the Settlement, the levels of impairment they represent are well established.

compensable diagnoses is empirically based and transparent in its rationale. *See* Dr. Millis Decl. ¶ 33; Dr. Kelip Decl. ¶ 41; Dr. Hamilton Decl. ¶ 16, 23 (“The principles underlying the algorithms have been published in many studies, and have been derived from statistical analyses of cognitive test data from thousands of healthy subjects.”).

ii. List of Qualifying Diagnoses and their Maximum Awards

Objectors argue that the Settlement excludes dozens of other conditions associated with repetitive mild traumatic brain injury, from pituitary hormonal dysfunction to epilepsy to sleep disorders.⁶³ Objectors also argue that the maximum awards for each Qualifying Diagnosis should be larger, and that the different maximum awards for each Qualifying Diagnosis are arbitrary. However, the current Qualifying Diagnoses and their maximum awards are reasonable.

Alzheimer’s Disease, Parkinson’s Disease, and ALS are all well-defined and robustly studied conditions. Epidemiological study has associated each of these diseases with repetitive mild traumatic brain injury. Dr. Fischer Decl. ¶¶ 6-7; Dr. Yaffe Decl. ¶ 13. Levels 1.5 and 2 Neurocognitive Impairment compensate a broad range of functional and neurocognitive symptoms regardless of underlying pathology.⁶⁴ Dr. Fischer Decl. ¶ 9. These objectively measurable symptoms have also been associated with concussions through epidemiological study. *Id.*

⁶³ *See, e.g.,* Davis Obj. at 1-2, ECF No. 6354 (seeking to include hearing loss); Collier Obj. at 2-3, ECF No. 6220 (seeking to include multiple sclerosis); Barber Obj. at 3, ECF No. 6226 (seeking to include post-concussion syndrome); *supra* note 34. Most Objectors cite no record evidence that these symptoms are associated with repetitive head trauma. *Cf.* Dr. Yaffe Decl. ¶ 91 (concluding that there is no link between multiple sclerosis and repeated head trauma). Additionally, many Objectors argue that mood and behavioral disorders, such as an increased propensity to commit suicide, should be compensated. Because these objections are frequently tied to a lack of coverage for CTE, they are discussed *supra* Section V.A.ii.

⁶⁴ *See infra* Section V.D.ii.

⁶⁶ See, e.g., Grimm Obj. at 1, ECF No. 6346; LaPlatney Obj. at 1, ECF No. 6390; Moore Obj. at 4-5.

57 (approving class action settlement where class members asserted claims for “increased risk of hemorrhagic stroke” and other injuries; settlement provided for awards ranging from \$100 to \$5 million); *Serzone Prods. Liab. Litig.*, 231 F.R.D. at 229-30 (approving class action settlement where class members asserted claims for “serious hepatic injuries,” including liver failure; settlement provided for awards ranging from \$100,000 to \$3.5 million).

Moreover, the relative differences in maximum awards for the Qualifying Diagnoses (\$1.5 million for Level 1.5 Neurocognitive Impairment, \$3 million for Level 2 Neurocognitive Impairment, \$3.5 million for Alzheimer’s Disease and Parkinson’s Disease, and \$5 million for ALS) are supported by objective variations in the severity of symptoms and the scientific understanding of each condition.

Level 1.5 Neurocognitive Impairment compensates objectively measurable cognitive decline in five cognitive domains: complex attention and processing speed, executive functioning, learning and memory, language, and spatial-perceptual. *See supra* Section V.B.i; *infra* Section V.D.ii. Level 2 Neurocognitive Impairment compensates these same impairments when they become more severe, justifying a higher award. *See supra* Section V.B.i.; *infra* Section V.D.ii.

Alzheimer’s Disease, Parkinson’s Disease, and ALS⁶⁷ also affect the five cognitive domains compensated by Levels 1.5 and 2 Neurocognitive Impairment, but additional considerations specific to each justify higher awards. *See* Dr. Hamilton Decl. ¶ 13.

Alzheimer’s Disease is well-defined and its clinical progression is well understood. *See* Dr. Hovda Decl. ¶ 24; Dr. Schneider Decl. ¶ 42. The course of Alzheimer’s Disease, including the timing and necessity of medical care, can be predicted with reasonable specificity. Dr. Schneider Decl. ¶ 42 (noting that highly accurate initial clinical diagnosis of Alzheimer’s Disease is possible). Unlike Alzheimer’s Disease, Levels 1.5 and 2 Neurocognitive Impairment

⁶⁷ Compensation for Death with CTE is discussed *supra* Section V.A.iii.

compensate a broad range of cognitive decline regardless of the link to any established disease or syndrome. Thus, whether Retired Players' symptoms for Levels 1.5 and 2 Neurocognitive Impairment will worsen and what the cost of their care will be are difficult to predict. *See* Dr. Fischer Decl. ¶ 9. Retired Players with Alzheimer's Disease, on the other hand, would face an easier task proving their injury is related to concussive hits and establishing their prospective damages. Therefore, the Settlement justifiably provides higher awards for Retired Players with Alzheimer's Disease than for Retired Players with Levels 1.5 and 2 Neurocognitive Impairment.

Parkinson's Disease and ALS cause debilitating neuromuscular impairment in addition to cognitive impairment. Because people with Parkinson's Disease and ALS must endure additional symptoms, the Settlement justifiably provides higher awards for Retired Players with these Qualifying Diagnoses than for Retired Players with Levels 1.5 and 2 Neurocognitive Impairment. The additional symptoms of Parkinson's Disease include tremors, rigidity, and posture and gait disorders. *See* Ali Samii et al., *Parkinson's Disease*, 363 *The Lancet* 1783, 1783-1784 (May 29, 2004). People with ALS experience rapid and sweeping degeneration of the entire neuromuscular system. They watch their bodies decompose until they require a feeding tube, ventilator, and 24-hour medical care merely to stay alive.⁶⁸ *See* Matthew C. Kiernan et al., *Amyotrophic Lateral Sclerosis*, 377 *The Lancet* 942, 944-45 (Feb. 7, 2011) (noting that 50% of victims die within three years of symptom onset). ALS' horrific symptoms explain why Retired Players with this Qualifying Diagnosis are eligible for the highest maximum award.

In conclusion, the record demonstrates that Class Counsel negotiated at arm's-length from the NFL Parties for most of a year with the guidance of Mediator Judge Phillips and Special

⁶⁸ Regrettably, Class Representative Kevin Turner has already begun to decline to this point. *See supra* Section IV.B.i.

Master Golkin. Class Counsel's decision to seek compensation for the conditions underlying the Qualifying Diagnoses at the levels specified in the Settlement is supported by scientific evidence. The nature of the negotiations and the scientific evidence in the record establish that the Qualifying Diagnoses and their maximum awards are reasonable.

C. Objections to Offsets

i. Age Offset

Monetary Awards decrease as the age at which a Retired Player receives a Qualifying Diagnosis increases. *See* Settlement Ex. 3. Some Objectors argue that this offset should be eliminated.⁶⁹ Other Objectors argue that if age is relevant, then Class Members should have the opportunity to prove Retired Players experienced symptoms before a formal diagnosis was made in order to decrease their age bracket and increase their award.⁷⁰ Both the offset, and exclusive reliance on the date of a Retired Player's Qualifying Diagnosis, are reasonable.

The age offset has considerable scientific support. Epidemiologically, Retired Players' most significant risk factor for developing each of the Qualifying Diagnoses is age. Dr. Yaffe Decl. ¶ 50. For example, a 75 year old is 302 times more likely to have dementia than a 45 year old. *See* Decl. of Thomas Vasquez ¶ 12, ECF No. 6423-21 ("Vasquez Decl."); FJC Manual at 602. As a Retired Player ages and becomes further removed from NFL Football, the likelihood that NFL Football caused his impairment decreases. Because it would be more difficult for an older Retired Player to prove specific causation at trial, this offset is justified.

⁶⁹ *See, e.g.*, Flint Obj. at 1 ("[A]s we get older the money goes down instead of up."); Duncan Obj. at 2-3, ECF No. 6357; Wilson Obj. at 1, ECF No. 6361; Alexander Stewart Obj. at 1, ECF No. 6392; Decl. of Drs. Brent Masel & Gregory O'Shanick ¶ 18, ECF No. 6180-2 ("The consequences of a brain injury are the same whether experienced in the past . . . or the future . . .").

⁷⁰ *See, e.g.*, Barber Obj. at 5-6; Duerson Obj. at 21-23; Daniel Obj. at 1, ECF No. 6367 ("Most people with symptoms of Alzheimer's [D]isease have suffered for a long time prior to diagnosis."); Perfetto Obj. at 2-5, ECF No. 6371.

Additionally, it is reasonable to provide greater compensation to younger Retired Players. Retired Players who did not become impaired until later in life enjoyed a longer life without neurological injury. In the tort system, awards for the same condition tend to be smaller for older plaintiffs. *See* Vasquez Decl. ¶ 15.

Objectors also argue that some Retired Players neglected to receive a Qualifying Diagnosis until after they had already suffered for many years. *See, e.g.*, Hawkins Obj. at 9, ECF No. 6373 (“[O]lder alumni are being penalized for the fact that the medical discoveries and the awareness of neurodegenerative diseases related to head trauma did not exist decades ago, even though for many players, their unrecognized and untreated symptoms were prevalent.”). Objectors argue that NFL Football’s alleged culture of downplaying injury exacerbated this issue. Owens Obj. at 1, ECF No. 6210 (“The NFL [Parties] encouraged a warrior mentality, leading its players to ignore pain and eventually, the damaging symptoms of brain disease.”). Objectors take issue with the Settlement’s exclusive reliance on a Retired Player’s age at the time he received a Qualifying Diagnosis for calculating compensation. They argue that a Retired Player should be permitted to present evidence about the onset of his impairment in order to use his younger age for calculating compensation. While these concerns may well be true, the Settlement is nonetheless reasonable.

Only physicians with sufficient qualifications in the field of neurology may make Qualifying Diagnoses. *See* Settlement §§ 6.3(b)-6.3(f) (noting that, with one exception to accommodate deceased Retired Players, all physicians must be board certified). Objectors, in effect, wish to expand this list to include friends, family members, and others without formal medical training who may have observed symptoms in a Retired Player before he received a Qualifying Diagnosis.

The potential for wrongful manipulation of such an exception is too great. Even if an appropriately credentialed physician subsequently confirms a diagnosis, it would be very difficult to retrospectively determine with any certainty when the condition first manifested. *See* Dr. Yaffe Decl. ¶ 93. Contemporaneous evaluation of a Retired Player’s symptoms by a clinician is necessary. The formal diagnosis requirement incentivizes Retired Players to actively seek the care they need, whether through the BAP or a Qualified MAF Physician.

ii. Severe TBI Offset

The Settlement offsets a Monetary Award by 75% if a Retired Player suffers a severe TBI unrelated to NFL Football. *See* Settlement § 6.7(b)(iii). Objectors argue that a single severe TBI should not have such a large effect on a Retired Player’s Monetary Award because the NFL Parties allegedly exposed Retired Players to dozens of such hits over the course of their careers. *See, e.g.*, Morey Obj. at 32; Duerson Obj. at 25-27.

This objection stems from a misunderstanding of terms.⁷¹ Retired Players were allegedly at an increased risk of repetitive mild traumatic brain injuries, including concussions. After suffering a mild traumatic brain injury, a Retired Player became impaired, but usually remained conscious, allowing him to return to play and continue experiencing dangerous blows. *See* Dr. Hovda Decl. ¶ 14. The traumatic brain injuries that trigger the offset are much more serious: “open or closed head trauma resulting in a loss of consciousness for greater than 24 hours.” Dr. Fischer Decl. ¶ 21; *see also* Settlement § 2.1(aaaaa) (defining “Traumatic Brain Injury” consistent with World Health Organization’s International Classification of Diseases that are used for severe TBIs). Severe TBI is well-studied, and a single severe TBI has a very strong

⁷¹ This is not necessarily Objectors’ fault. The medical community is still in the process of developing uniform definitions for the severity of various TBIs: “[W]hen a study finds that a TBI is a risk factor for or associated with a certain condition, it is often unclear whether the study means severe TBI, moderate TBI, mild TBI, or repetitive TBI—or any mix of these combinations.” Dr. Yaffe Decl. ¶ 41.

association with dementia, Alzheimer's Disease, and Parkinson's Disease.⁷² Dr. Yaffe Decl.

¶ 90. This strong association justifies the 75% offset for Retired Players who suffered a severe TBI.

Moreover, even if a Retired Player suffered a severe TBI, the Settlement still provides that Retired Player with an opportunity to demonstrate by clear and convincing evidence that the severe TBI did not cause his Qualifying Diagnosis. *See* Settlement § 6.7(d).

iii. Stroke Offset

Objectors similarly contend that the 75% offset for Stroke is unreasonable. *See* Morey Obj. at 32-34; Barber Obj. at 6-8, ECF No. 6226.

Like severe TBI, Stroke is a well-known cause of the Qualifying Diagnoses. Indeed, the medical community recognizes that Stroke is the second most common cause of dementia. Dr. Yaffe Decl. ¶ 87. Doctors often refer to this particular type of dementia as vascular dementia. Dr. Fischer Decl. ¶ 18.

Objectors do not dispute this, and instead argue that the repetitive mild TBI Retired Players were exposed to also cause Stroke. *See* Morey Obj. 32-33; Decl. of Drs. Masel & O'Shanick ¶ 17. However, the studies they cite do not support this proposition. Two of the cited studies examine the effects of moderate and severe TBI, not repetitive mild TBI, on Stroke.⁷³ Other

⁷² Objectors argue that CTE causes severe TBI because CTE impedes impulse control and increases the risk of severe TBI through car accidents. *See* Morey Obj. at 32 n.33; Duerson Obj. at 26. Even if true, this risk is too attenuated to render this offset unfair.

⁷³ *See* James F. Burke et al., *Traumatic Brain Injury May Be an Independent Risk Factor for Stroke*, 81 *Neurology* 1, 2 (2013), ECF No. 6201-6 (limiting study to individuals with head injury so serious that it required a visit to a hospital emergency room or inpatient admission); Yi-Hua Chen et al., *Patients with Traumatic Brain Injury: Population-Based Study Suggests increased Risk of Stroke*, 42 *Stroke* 2733, 2734 (2011), ECF No. 6422-22 (limiting study to individuals "who had visited ambulatory care centers . . . or had been hospitalized with a principal diagnosis of TBI" and finding a large portion of Stroke risk occurred in the three months after experiencing severe TBI).

studies do not address Stroke at all.⁷⁴ Objectors also argue that the NFL Parties’ alleged administration of the drug Toradol to Retired Players increased the risk of Stroke, but cite no studies in support of this claim. *See* Duerson Obj. at 26-27; *see also* Dr. Fischer Decl. ¶ 20 (“I am not aware of any scientific support for [the contention that Toradol increases latent stroke risk], and I have seen no such reference in any of the papers cited by the objectors.”). The Stroke offset is reasonable.

Moreover, as with the severe TBI offset, any Retired Player has an opportunity to demonstrate by clear and convincing evidence that the Stroke he suffered did not cause his Qualifying Diagnosis. *See* Settlement § 6.7(d).⁷⁵

iv. Eligible Season Offset

Objectors argue that the offset for playing fewer than five Eligible Seasons is unfair because “[a] single severe concussion in the first game of a player’s career could cause a player to suffer dementia.” *Armstrong* Obj. at 16; *see also* Drs. Masel & O’Shanick Decl. ¶ 16 (“[A] single concussion . . . is capable of generating debilitating physical, cognitive and behavioral impairments”); *Duncan* Obj. at 2, ECF No. 6357 (“[B]rain damage is sustained from the intensity and severity of the incident and could result from a single hit.”).

⁷⁴ *See* Erin D. Bigler, *Neuropsychology and Clinical Neuroscience of Persistent Post-Concussive Syndrome*, 14 J. Int’l Neuropsychological Soc’y 1 (2008), ECF No. 6201-6 (failing to mention Stroke). Objectors also contend that repetitive mild TBI increases microbleeds, which increase Stroke. Although the study they cite found that 4 out of 45 Retired Players had microbleeding, researchers were unable to conclude that this percentage was any higher than what would be found in a control group. *See* Ira R. Casson et al., *Is There Chronic Brain Damage in Retired NFL Players? Neuroradiology, Neuropsychology, and Neurology Examinations of 45 Retired Players*, 6 Sports Health 384, 391 (2014), ECF No. 6201-6 (“It is not yet known whether the 9% frequency of microbleeds is higher than what might appear in an age-matched normal population”). Moreover, the study does not address Stroke.

⁷⁵ Objectors contend that the NFL Parties should bear the burden of proving that the offsets for severe TBI and Stroke are reasonable. *See* Barber Obj. at 6-8. Given the strength of the association between these events and neurocognitive impairment, placing the burden of proof on a Retired Player is reasonable.

The Eligible Season offset serves as a proxy for the number of concussive hits a Retired Player experienced as a result of playing NFL Football. *See* Drs. Masel & O’Shanick Decl. ¶ 16 (conceding it is “reasonable to assume that that exposure to mild TBI increases as playing time increases”). Retired Players with brief careers endured fewer hits, making it less likely that NFL Football caused their impairments. Research supports the claim that *repeated* mild TBI have an association with Qualifying Diagnoses. *See* Dr. Fischer Decl. ¶¶ 6-7; Dr. Yaffe Decl. ¶ 13.

Objectors cite no authority for the assertion that a single mild TBI is enough to create long lasting, permanent neurological damage. *See* Dr. Fischer Decl. ¶¶ 5-6 (noting “the critical subgroup [is] those individuals who have sustained repeated clinical and subclinical traumatic brain injuries over a significant period of time” and that Qualifying Diagnoses have been associated with “repeated traumatic brain injury”). Short-term concussion symptoms—the wooziness typically experienced after a hit—come from the release of the excitatory amino acid glutamate. Dr. Hovda Decl. ¶ 15. An isolated concussion does not result in cell death or structural damage to the brain and is a largely recoverable diagnosis. Dr. Giza Decl. ¶ 12. However, permanent damage can occur if the brain continues to experience trauma before making a full recovery, such as when people experience additional head injuries. *Id.* Thus, the offset for playing fewer than five Eligible Seasons is reasonable.

A Retired Player receives an Eligible Season credit if he was on an NFL Member Club’s Active List for at least three regular or postseason games, or if he was on a Member Club’s Active List for at least one regular season or postseason game and spent two games on an inactive list or injured reserve list due to a concussion or head injury. *See* Settlement § 2.1(kk). A Retired Player receives half of an Eligible Season credit if he satisfied either of these criteria playing for a team in the World League of American Football, NFL Europe League, or NFL

Europa League (collectively, “NFL Europe”). A Retired Player receives half of an Eligible Season credit if he was on an NFL Member Club’s practice, developmental, or taxi squad roster for at least eight regular or postseason games. *Id.*

Objectors argue that the definition of an Eligible Season should derive from the definition of “Credited Season” used in the Bert Bell/Pete Rozelle NFL Player Retirement Plan because the latter credits seasons in which a Retired Player was placed on injured reserve at any time, for any injury. *See, e.g.,* Slack Obj. at 6-7, ECF No. 6223. Objectors contend that “[t]he basis for limiting the injured reserve credit to players on injured reserve due to a concussion or head injury is not explained in the proposed Settlement.” Andrew Stewart Obj. at 3, ECF No. 6175.

Eligible Seasons are a proxy for exposure to concussive hits. Retired Players on injured reserve did not play or practice. A Retired Player on injured reserve because of a concussion was almost certainly at a higher risk of long-term neurological damage than a Retired Player on injured reserve for an injury unrelated to concussive hits. Limiting Eligible Season credit to Retired Players placed on injured reserve with a head injury is reasonable.

Objectors also argue that Retired Players who played in NFL Europe should receive full Eligible Season credit. As amended, the Settlement now allows Retired Players to earn half of an Eligible Season credit for time spent on an active roster in NFL Europe.⁷⁶ *See* Settlement § 2.1(kk). A Retired Player may combine his half of a season credit with other Eligible Season credit from time spent on a domestic Member Club’s roster, but may only earn one total Eligible Season credit per year.⁷⁷ *See id.* § 6.7(c).

⁷⁶ Previously, Retired Players received no Eligible Season credit for participation in NFL Europe. The amendment addresses concerns raised by several Objectors. *See, e.g.,* Morey Obj. at 34-36; Slack Obj. at 3-4, ECF No. 6223; Duff Obj. at 1, ECF No. 6348; Jones Obj. at 2-4; Zeno Obj. at 1-2, ECF No. 6386.

⁷⁷ Seasons in NFL Europe occurred in the spring, and did not overlap with the domestic NFL Football season. Without this limitation, a Retired Player who, in one year, played three games on an Active List

NFL Europe had a shorter regular season than domestic NFL Football—10 games rather than 16—and held fewer practices. Decl. of T. David Gardi ¶ 14, ECF No. 6422-33. Additionally, NFL Europe Retired Players face a litigation risk that other Retired Players do not. To play in NFL Europe, Retired Players had to sign employment contracts that provided workers’ compensation benefits. Florida and Georgia law govern these agreements and mandate that workers’ compensation is the exclusive remedy for work related injuries. *See id.* ¶¶ 5, 8-9, 12. The NFL Europe Eligible Season credit is reasonable.

Lastly, Objectors challenge the exclusion of training camp and preseason games from the calculation of Eligible Season credit. They argue that these activities exposed Retired Players to concussive hits because many Retired Players had to play hard to ensure roster spots. *See, e.g.*, Andrew Stewart Obj. at 4-5 (“Training camps were full contact, twice a day for 3.5 hours each session.”); Moore Obj. at 2, ECF No. 6399 (noting that “the hitting in scrimmages and live practices was (is) just as intense, if not more so, than in the regular season games”).

While training camp and preseason were undoubtedly brutal, so too were the regular and postseason games that qualify a Retired Player for Eligible Season credit. It is reasonable to assume that Retired Players who made the roster, and thus continued to play NFL Football that season, were exposed to a greater number of potentially harmful hits. While the Settlement may have been more generous if Retired Players received Eligible Season credit for training camp and preseason participation, the lack of credit does not render the Settlement unfair.

In sum, the calculation of Eligible Season credit is reasonable.

for both NFL Europe and domestic NFL Football could have earned one-and-a-half Eligible Season credits.

v. BAP Offset

Retired Players who neglect to take a baseline assessment examination and who later develop a Qualifying Diagnosis will see their awards reduced by 10%. *See* Settlement § 6.7(b)(iv).

Objectors challenge this provision as arbitrary. Morey Obj. at 74.

The offset is a reasonable means to encourage Retired Players to participate in the BAP. Baseline assessment examinations either result in a Qualifying Diagnosis or produce a more complete picture of a Retired Player's neurocognitive profile. The latter makes a subsequent Qualifying Diagnosis easier to render by providing a point of comparison. *See infra* Section V.D.i. The scope of the offset confirms that its purpose is to incentivize baseline assessment examinations. The offset does not apply to Retired Players who received Qualifying Diagnoses before the Preliminary Approval Date or those without Qualifying Diagnoses who are still eligible to participate in the BAP. *See* Settlement § 6.7(b)(iv).

D. Objections to the Baseline Assessment Program

i. BAP Fund

The primary purpose of the BAP is to provide free, comprehensive neurological and neuropsychological examinations to Retired Players. Retired Players may receive diagnoses of Level 1 Neurocognitive Impairment and Qualifying Diagnoses of Levels 1.5 and 2 Neurocognitive Impairment through baseline assessment examinations.⁷⁸ Class Counsel's actuarial expert predicts that the cost of these exams will account for less than two thirds of the \$75 million BAP Fund. *See* Vasquez Decl. ¶¶ 23-24. Even if the costs of these exams exceed the \$75 million BAP Fund, the Parties amended the Settlement to guarantee that every eligible

⁷⁸ Qualifying Diagnoses of Alzheimer's Disease, Parkinson's Disease, and ALS cannot be made through baseline assessment examinations. *See infra* Section V.D.ii. Retired Players must visit Qualified MAF Physicians to receive any of these Qualifying Diagnoses. Qualified MAF Physicians may also provide Retired Players with Qualifying Diagnoses of Levels 1.5 and 2 Neurocognitive Impairment. *See* Settlement § 6.3(b).

Retired Player can receive an exam regardless of the total cost. *See* Parties' Joint Amendment at 3-4.

Any remaining money in the BAP Fund will go toward BAP Supplemental Benefits for Retired Players who are diagnosed with Level 1 Neurocognitive Impairment. *See* Settlement § 5.14(b) (noting that benefits per Retired Player will be calculated in light of the cost of providing Retired Players with baseline assessment examinations). Objectors argue that these benefits are insufficient because the annual cost of treating dementia is allegedly \$56,000. *See* Morey Obj. at 72. Objectors, however, compare apples to oranges. Level 1 Neurocognitive Impairment is not early dementia; it is less severe. *See* Settlement Ex. 1, at 1-2; *supra* Section V.B.i. If a Retired Player progresses to early dementia (Level 1.5 Neurocognitive Impairment), he will be entitled to compensation from the uncapped Monetary Award Fund. *See* Settlement §§ 23.1(a)-(b).

Moreover, Class Counsel's actuary estimates that the average BAP Supplemental Benefit per Retired Player will range from \$35,000 to \$52,000; the NFL Parties' actuaries predict that there may be an \$11 million surplus in the BAP Fund even after payment of BAP Supplemental Benefits to Retired Players. Vasquez Decl. ¶ 28; NFL Parties' Actuarial Materials ¶ 10.

ii. Test Battery

Baseline assessment examinations subject Retired Players to a Test Battery that provides a comprehensive neuropsychological and neurological examination. The Test Battery consists of four components, all administered by a board-certified neurologist and an appropriately credentialed neuropsychologist. First, the Advanced Clinical Solutions Test of Premorbid Functioning ("TOPF") is used to estimate a Retired Player's basic pre-injury ability level. *See* Settlement Ex 2. Second, a series of tests assesses a Retired Player's level of functioning in five

cognitive domains, including complex attention and processing speed, executive functioning, learning and memory, language, and spatial-perceptual. *Id.* The series also includes tests of functional impairment, such as a Retired Player’s ability to perform daily chores. Third, the Test Battery includes two tests that focus on emotional functioning and aspects of personality, the MMPI-2RF and the Mini International Neuropsychiatric Review (“Mini”). *Id.* Finally, there are several “validity” measures, designed to ensure that test takers are not intentionally submitting incorrect answers to seem impaired. *Id.*

Collectively, these tests provide Retired Players with a comprehensive baseline assessment of their cognitive capabilities and their neuropsychological state. See Dr. Fischer Decl. ¶ 14. Numerous empirical studies show that these tests are effective at identifying impairment, especially in persons who have sustained brain injury. *Id.* ¶ 16. It would be very difficult for any significant neurological abnormalities to escape an examination of this breadth.⁷⁹

Objectors argue that the Test Battery does not resemble exams typically given by neuropsychologists in the field.⁸⁰ This is incorrect. The Parties and their experts did not construct any test from scratch; each individual exam in the Test Battery is a well-established and validated tool for diagnosing neurocognitive impairment in any age group and is supported by extensive empirical testing to ensure its validity. See, e.g., Dr. Kelip Decl. ¶¶ 28, 33; Dr. Millis Decl. ¶¶ 17-20, 24-25; Dr. Hamilton Decl. ¶ 14 (practicing physician noting that the Test Battery includes exams that are “very similar (and, in many cases, identical)” to tests used in every day practice for these types of diagnoses). The TOPF is a well-accepted exam for

⁷⁹ See Dr. Fischer Decl. ¶ 14 (noting that the Test Battery will include “constitutional evaluation, mental status testing, speech testing, full cranial nerve investigation, motor function, sensory function, coordinative testing, reflex testing, back and neck evaluation, and gait and posture”).

⁸⁰ See, e.g., Morey Obj. at 73 (“The testing protocols prescribed by the Settlement are generally considered inappropriate for the evaluation of individuals with neurodegenerative diseases.”); Drs. Masel & O’Shanick Decl. ¶ 12 (arguing for a “more holistic, human-based, and less linguistically reliant” examination); Duerson Obj. at 24.

estimating premorbid function.⁸¹ Dr. Millis Decl. ¶ 17. The cognitive domains tested in the Test Battery are those laid out in the Neurocognitive Disorders section of the DSM-5. *See* Dr. Kelip Decl. ¶ 17. Functional impairment is measured by the National Alzheimer’s Coordinating Center’s CDR scale, a validated and commonly-used scale for assessing the progression of dementia symptoms. *See* Settlement Ex. 1; Dr. Kelip Decl. ¶ 35. A survey of 747 well-credentialed psychologists “shows that the tests included in the Test Battery are among the most widely used neuropsychological tests across all patient groups.” Dr. Millis Decl. ¶ 25.

Objectors also argue that the Test Battery’s five-hour length is excessive, and that many genuinely impaired Retired Players will be unable to complete it. *See* Morey Obj. at 73; Dr. Stern Decl. ¶ 44. The Test Battery contains countermeasures to ensure that this does not occur. Most of the individual tests administered have “stopping rules” that allow the examiner to shorten the exam based on how the participant is performing. *See* Dr. Millis Decl. ¶ 26. More broadly, the neurologists and neuropsychologists who will administer the Test Battery will have training and experience administering tests of this length to impaired subjects. *See id.*; Dr. Kelip Decl. ¶ 40. Empirical evidence shows that patients suffering from dementia can tolerate tests of this length. *See* Dr. Kelip Decl. ¶¶ 36, 40.

Objectors also challenge the Test Battery’s validity measures and argue that these exams will produce false positives and exclude Retired Players who are legitimately impaired. *See* Dr. Stern Decl. ¶ 46. Validity measures, however, are universally regarded as a necessary component of any neurocognitive testing because they ensure the reliability of the data. Dr. Millis Decl. ¶ 28; Dr. Kelip Decl. ¶ 43. They are particularly reasonable where, as here, test takers have a

⁸¹ Some Objectors argue that the TOPF disadvantages those with accents because one component asks participants to read a list of words and pronounce them exactly. *See* Drs. Masel & O’Shanick Decl. ¶ 14. The TOPF, however, also includes demographic formulas based on age, education, and gender that provide an alternative means for assessing premorbid ability. Dr. Millis Decl. ¶ 37.

significant financial incentive to appear impaired. The Test Battery incorporates well-established validity criteria that take into account the overall performance of the subject and how that performance compares to known patterns of impairment. Dr. Millis Decl. ¶ 30; Dr. Kelip Decl. ¶ 44.

Finally, many Objectors argue that the Test Battery provides insufficient testing for mood and behavioral conditions allegedly associated with CTE.⁸² Because the Settlement does not compensate these conditions, more limited testing is reasonable. Nonetheless, the Test Battery does include two tests, the Mini and MMPI-2RF, which exclusively test for mood and behavioral abnormalities. These two tests include questions on irritability, lowered inhibitions, suicidal thinking, and depression. *See* Dr. Kelip Decl. ¶ 39; Dr. Hamilton Decl. ¶ 22. Red flags on these neuropsychological tests can become the focus of follow up care, including additional testing and treatment.

iii. BAP Protocols

Objectors challenge the age cutoffs for baseline assessment examinations and the ten-year length of the BAP.⁸³ *See* Morey Obj. at 74; Armstrong Obj. at 19-20; Alexander Obj. at 7. These requirements are both reasonable and scientifically based.

A Retired Player who is younger than 43 has ten years or until his 45th birthday, whichever happens first, to receive a baseline assessment examination. *See* Settlement § 5.3. A Retired Player 43 or older has two years from the commencement of the BAP to receive an exam. *Id.* In all circumstances, a Retired Player will have at least two years to receive a baseline assessment

⁸² *See, e.g.*, Duerson Obj. at 23 (“The BAP does not test for the mood and behavioral disorders that plague many individuals who suffer from CTE, effectively excluding a significant number of Class Members from the possibility of compensation.”); Morey Supplemental Obj. at 3, ECF No. 6232.

⁸³ Objectors also challenge the 180-day registration requirement. *See* Armstrong Obj. at 19. Because this is a prerequisite to many settlement benefits, it is discussed *infra* Section V.E.ii.

examination. Two years is a reasonable period of time for a Retired Player to complete a free, five-hour exam.

Both the structure of the Settlement and neurological science justify these deadlines. The age offset decreases the Monetary Awards for Qualifying Diagnoses rendered after age 45. *See* Settlement Ex. 3. As discussed *supra*, this is because Retired Players’ most significant risk factor for developing each Qualifying Diagnosis is age. *See* Vasquez Decl. ¶ 11; Dr. Yaffe Decl. ¶ 50. Timely baseline assessment examinations ensure that funds are most likely to be distributed to Retired Players whose symptoms are a result of playing NFL Football. These deadlines also work to the benefit of Retired Players. Earlier exams may lead to earlier Qualifying Diagnoses and result in higher awards. Even if a Retired Player is not yet impaired, an earlier exam will provide a more accurate picture of the Retired Player’s premorbid functioning. The same reasoning justifies the ten-year limit on the BAP.

iv. Selection Process for Qualified BAP Providers

Only pre-selected Qualified BAP Providers may administer baseline assessment examinations. Settlement § 5.2. The BAP Administrator will select these BAP Providers, subject to limited veto rights of both the NFL Parties and Co-Lead Class Counsel. *See id.* § 5.7(a)(i) (providing for 20 vetoes each). Some Objectors argue that this unfairly slants the process towards the NFL Parties because the neuropsychologists selected “are likely to be far more conservative in ‘calling’ impairment than a neuropsychologist chosen by a player.” Armstrong Obj. at 20; *see also* Alexander Obj. at 8.

The selection requirement is reasonable. Qualified BAP Providers must be well-trained and credentialed. Neurologists must be board certified, and neuropsychologists must be certified by the American Board of Professional Psychology or the American Board of Clinical

Neuropsychology. *See* Settlement § 5.2. A BAP Provider is ineligible if he has committed a crime of dishonesty. *Id.* § 5.7(a)(ii). Co-Lead Class Counsel also have the ability to veto potential Qualified BAP Providers, and an absolute right to exclude any BAP Provider with some connection to the litigation as an expert witness or consultant.⁸⁴ *Id.* § 5.7(a)(i).

v. Use of Mail Order Pharmacy Vendors

The Qualified BAP Pharmacy Vendors that provide prescription drugs as part of BAP Supplemental Benefits are all mail order pharmacies. *See id.* §§ 2.1(xxx); 5.7(b). Objectors challenge this limitation, claiming that mail order pharmacies may be unable to deliver certain necessary medications because of storage requirements and will “deprive Class Members of the personal, face-to-face counseling available at local ‘brick and mortar’ pharmacies.” Armstrong Obj. at 23.

The Claims Administrator intends to work with all potential mail order Qualified BAP Pharmacy Vendors to ensure that each “offers the option to fill prescriptions at a local retail pharmacy, when necessary, due to the transportation and storage requirements of required therapies; the necessity of frequent medication dose adjustments . . . [and] the desire of Class Members to avail themselves of ‘face-to-face’ counseling.” Garretson Aff. ¶ 15. Thus, there is no reason for concern.

For all of the reasons discussed above, the Baseline Assessment Program is reasonable. Objections to the BAP are overruled.

⁸⁴ Some Objectors argue that this rule is unfair because it prejudices the ability of Opt Outs to retain experts to prosecute their cases. Because a physician cannot be both an Opt Out’s expert witness and a Qualified BAP Provider, Objectors imply that physicians will choose to become Qualified BAP Providers rather than serve as experts for Opt Outs. *See* Morey Obj. at 86. However, Objectors lack standing to assert the rights of Opt Outs because they are Class Members. Moreover, Objectors cite no evidence that the pool of available physicians is small enough for this to be a burden.

E. Objections to the Claims Process

Objectors argue that the claims process is unduly burdensome. They fear that few Class Members will submit claims, and that Class Members who do submit claims will be thwarted by a “complex and burdensome administrative process.” Morey Obj. at 73; Heimburger Obj. at 18.

Objectors fail to consider that the claims process needs to be rigorous enough to deter submission of fraudulent claims. Monetary Awards may amount to hundreds of thousands if not millions of dollars to eligible Class Members. Settlement Ex. 3. The NFL Parties are entitled to reasonable procedures and documentation to ensure that large awards go to deserving claimants. In cases with large awards, an overabundance of fraudulent claims, rather than a dearth of valid ones, is the main concern. Submission of fraudulent claims to class settlements is, unfortunately, a documented phenomenon. *See In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prods. Liab. Litig.*, 573 F. App’x 178, 180 (3d Cir. 2014) (noting that the settlement was “inundated with fraudulent claims that included manipulated [medical] test results”); *United States v. Penta*, No. 08-0550 (E.D. Pa. Sept. 11, 2008) (indictment charging five people, who all ultimately pleaded guilty, with submitting \$40 million in fraudulent claims to the *Nasdaq Market-Makers*, *Cendant*, and *BankAmerica Securities* settlements); *Oetting v. Green Jacobson, P.C.*, No. 13-1148, 2014 WL 942952, at *1 (E.D. Mo. Mar. 11, 2014) (noting millions of dollars of false claims submitted in *BankAmerica Securities* settlement).

Objectors also fail to consider the protections built into the Settlement to ensure that deserving claims are approved. Specifically, the Claims Administrator responsible for implementing the claims process is an independent entity subject to oversight by an independent Special Master and, ultimately, this Court. *See* Settlement § 5.6(a)(iv) (“The Special Master . . . will oversee the BAP Administrator, and may, at his or her sole discretion, request reports or

information from the BAP Administrator”); *id.* § 10.2(a)(iii) (“The Court may, at its sole discretion, request reports or information from the Claims Administrator.”); *id.* § 10.2(e) (Claims Administrator may be replaced for cause upon order of the court, or by joint motion of the Parties). This independent oversight will ensure that all claims are objectively evaluated. Additionally, the NFL Parties have contracted to implement the Settlement in good faith, and remain subject to this Court’s continuing jurisdiction and oversight. *See id.* §§ 20.1(n), 27.1 (“[T]he Court retains continuing and exclusive jurisdiction . . . to interpret, implement, administer and enforce the Settlement”); *id.* § 30.11 (“Counsel for the NFL Parties will undertake to implement the terms of this Settlement in good faith.”).

i. Cognitive Impairment of Certain Retired Players

Objectors argue that the claims process is unreasonable because Retired Players suffering from cognitive impairment cannot be expected to keep track of forms, deadlines, and submission requirements. *See, e.g.,* Morey Obj. at 78 (“Someone laboring under [a Qualifying Diagnosis] has little hope of navigating the procedural morass required to claim payment under the Settlement.”); Carrington Obj. at 7.

The Settlement reasonably accommodates the needs of cognitively impaired Retired Players. The Settlement allows any Class Member to use a representative to conduct the claims process for him. Any Class Member may retain counsel to compile and submit any relevant forms on his behalf. Settlement § 30.2(a). The Settlement provides an extension of the registration deadline for good cause, and an opportunity for any Class Member to cure an incomplete Claim Package. *See id.* §§ 4.2(c)(i), 8.5. The Claims Administrator, who is experienced in administering claims in personal injury settlements, will be especially sensitive to the needs of cognitively impaired Retired Players. *See* Brown Decl. ¶ 57.

ii. Registration Requirement

Class Members must register with the Claims Administrator within 180 days of receiving notice that the Settlement has gone into effect. *See* Settlement § 4.2(c). Registration is a prerequisite to Class Members' receipt of most Settlement benefits, including receipt of Monetary Awards and participation in the BAP. *See id.* §§ 5.1, 6.2. Objectors assert that this creates an unfair "opt in" settlement. Morey Obj. at 74. The registration requirement is reasonable, not onerous. *See In re Orthopedic Bone Screw Prods. Liab. Litig.*, 246 F.3d 315, 316 (3d Cir. 2001) ("[D]eadlines are an integral component of effective consolidation and management of the modern mass tort class action.").

To register, a Class Member must only submit basic biographical information, including name, contact information, and the dates and nature of a Retired Player's employment with the NFL Parties sufficient to determine that the registrant is a Class Member.⁸⁵ *See* Settlement § 4.2(b). In the event that a Class Member cannot register in the six-month window, the Settlement provides an extension for good cause. *Id.* § 4.2(c). If the Claims Administrator rejects a Class Member's application, he has an opportunity to appeal. *Id.* § 4.3(a)(ii); *see also Diet Drugs*, 2000 WL 1222042, at *20, 23-24 (describing various registration requirements for benefits).

Class Members will receive ample reminders to complete the registration process. Within 30 days of the Effective Date of the Settlement, Class Members will be mailed materials reminding them to register. Settlement § 14.1(d). An automatic telephone service established by the Claims Administrator will likewise inform Class Members of upcoming deadlines. *See id.* §§ 4.1(b), 10.2(b)(i)(2), 14.1(d).

⁸⁵ Representative and Derivative Claimants must also identify the Retired Player through whom they have a claim. *See* Settlement §§ 4.2(b)(i)-(ii).

The registration requirement is not a meaningless exercise; rather, it enables the Settlement to provide key services. The BAP Administrator and Claims Administrator must approve lists of Qualified BAP Providers and Qualified MAF Physicians to provide baseline assessment examinations and make Qualifying Diagnoses. Class Members' contact information enables the BAP Administrator to appoint physicians in sufficient quantity and geographical distribution to ensure that all Class Members can access these benefits. *See id.* §§ 5.7(a)(ii), 6.5(b). Registration also enables more effective communication between the Claims Administrator and the Class, so that Class Members may remain abreast of deadlines and other relevant information. *See id.* § 4.2(b) (asking registrants to choose between email, U.S. mail, and other methods of communication); *id.* § 4.3(a)(i) (noting that, upon successful registration, Class Members will receive access to a secure web-based portal that provides information regarding the Claim Package and awards).

iii. Use of Qualified MAF Physicians

After the Effective Date, Retired Players must, at their own expense, visit Qualified MAF Physicians to receive a Qualifying Diagnosis of Alzheimer's Disease, Parkinson's Disease, or ALS.⁸⁶ *See id.* §§ 6.3(b), 6.5(a). Objectors argue that Class Members should be allowed to choose their own physicians to reduce the burden of obtaining Qualifying Diagnoses. *See* Morey Obj. at 76 (noting lack of hardship provision for Class Members geographically isolated from a Qualified MAF Physician); Daniel Obj. at 1-2, ECF No. 6367; Erickson Obj. at 5, ECF No. 6380; Taylor Obj. at 2-3, ECF No. 6397.

Requiring Retired Players to visit a Qualified MAF Physician to receive certain Qualifying Diagnoses is reasonable. Qualified MAF Physicians must be board certified and able to perform

⁸⁶ Qualifying Diagnoses of Levels 1.5 and 2 Neurocognitive Impairment may be made by both Qualified MAF Physicians and through the BAP by Qualified BAP Providers. *See id.* § 6.3(b). Compensation for Death with CTE ends on the Final Approval Date. *See supra* Section V.A.iii.

the exams necessary to render Qualifying Diagnoses. *See* Settlement §§ 2.1(www), 6.5(c). A Retired Player’s primary care physician will not necessarily have this training. Moreover, visiting a Qualified MAF Physician is not an undue burden. The Claims Administrator must take into account geographic proximity to Retired Players when selecting Qualified MAF Physicians. *See id.* § 6.5(b).

iv. Claim Package

To receive a Monetary Award, a Class Member must submit a Claim Package that includes a signed Claim Form, records demonstrating employment with the NFL Parties, a Diagnosing Physician Form, and medical records reflecting a Qualifying Diagnosis. *Id.* § 8.2(a). As amended, the Settlement allows a Representative Claimant of a deceased Retired Player to petition the Claims Administrator to excuse the latter two requirements if those records were lost in a hurricane or other *force majeure* type event, and the Representative Claimant can produce a death certificate referencing the Qualifying Diagnosis.⁸⁷ *Id.* § 8.2(a)(ii). To demonstrate that a Retired Player participated in more than one Eligible Season, a Class Member must include evidence beyond a Retired Player’s sworn statement attesting to his playing time. *Id.* § 9.1(a)(i). A Claim Package “must be submitted to the Claims Administrator no later than two (2) years after the date of the Qualifying Diagnosis or within two (2) years after the Settlement Class Supplemental Notice is posted on the Settlement Website, whichever is later.” *Id.* § 8.3(a)(i).

The contents of the Claim Package are reasonable. “Class members must usually file claims forms providing details about their claims and other information needed to administer the settlement.” Manual for Complex Litigation § 21.66 (4th ed.). Only information necessary to determine that a Retired Player played in the NFL and received a Qualifying Diagnosis is

⁸⁷ The amendment addresses the concerns raised in the objection of Delano Williams. *See* D. Williams Obj. at 4-6, ECF No. 6221.

required. Objectors complain that the specific forms constituting the Claim Package have not been disclosed, but cite no source requiring disclosure at this stage. *See* Morey Obj. at 75. Class Members will receive “detailed information regarding the Claim Package” and application process upon registration. Settlement § 4.3(a)(i).

Objectors challenge the requirement that a Retired Player needs to submit more than just a sworn statement in order to receive more than one Eligible Season credit. *See id.* § 9.1(a)(i); Morey Obj. at 75 (contending that there is “no possible justification for this procedural hurdle because *the NFL itself has this data*”). This requirement, however, is reasonable as an initial screen to weed out fraudulent claims. If a Class Member’s proffered evidence is insufficient, the NFL Parties and individual Member Clubs are required to turn over, in good faith, any records that they possess. *See id.* § 9.1(a); *Varacallo*, 226 F.R.D. at 243 (concluding that it is reasonable to require submission of documents in support of a claim even though the defendant was also required to submit a file that “may [have] contain[ed] information that would support” the claim). Moreover, Retired Players likely retain employment records, especially because their retirement and disability benefits similarly turn on the number of seasons played. *See* Andrew Stewart Obj. at 7 (“The Term ‘Credited Season’ is familiar to all players and is routinely used to determine eligibility pension and disability benefits.”); *id.* Ex. 6, ECF No. 6175-3 (Bert Bell/Pete Rozelle NFL Player Retirement Plan).

Finally, Objectors challenge the two-year window the Settlement provides Class Members to submit a Claim Package after a Retired Player has received a Qualifying Diagnosis. However, courts in the Third Circuit have upheld far shorter periods. *See In re Ins. Brokerage Antitrust Litig.*, MDL No. 1663, 2007 WL 542227, at *10 (D.N.J. Feb. 16, 2007) (holding that five-month period to submit claims forms is reasonable), *aff’d*, 679 F.3d 241 (3d Cir. 2009); *Processed Egg*

Prods., 284 F.R.D. at 256 (approving settlement where class members had “127 days from the postmark date that the notice of the settlement was mailed by first-class mail . . . to return a completed Claim Form to make a claim for benefits”). Moreover, if a Class Member can demonstrate substantial hardship, then this window may be expanded by an additional two years. *See Settlement* § 8.3(a)(i).

v. Appeals Process

Class Members, Co-Lead Class Counsel, and the NFL Parties may each appeal the Claims Administrator’s decision as to whether a Class Member is entitled to a Monetary Award. *Id.* § 9.5. To appeal, a Class Member must pay a \$1,000 fee, which will be refunded if the appeal is successful. *Id.* § 9.6(a). As amended, the Settlement allows the Claims Administrator to waive the fee if a Class Member can show financial hardship.⁸⁸ *Id.* § 9.6(a)(i). Appeals are limited to five single-spaced pages, and subject to proof by clear and convincing evidence. *Id.* §§ 9.7(a), 9.8. The Court is the ultimate arbiter of any appeal, and may consult a member of an Appeals Advisory Panel for medical advice. *Id.* § 9.8.

Objectors contend that exempting the NFL Parties from an appeal fee is unfair, and that the exemption will allow them to undertake unlimited appeals. *Armstrong Obj.* at 23-24; *see also* *Morey Obj.* at 76. The NFL Parties may only undertake appeals in good faith, and Co-Lead Class Counsel may petition this Court for appropriate relief if the NFL Parties subvert this requirement. *See Settlement* § 9.6(b).

Objectors also argue that the five-page limit and the clear and convincing standard will make successful appeals “extremely rare.” *Armstrong Obj.* at 24. These provisions, however, also apply to the NFL Parties and thus protect favorable awards to Class Members. Moreover, the

⁸⁸ This amendment addresses a concern raised by several Objectors. *See, e.g., Morey Obj.* at 76; *Armstrong Obj.* at 23-24.

five-page limit applies only to written statements; additional medical records and other evidence in support of an appeal are exempted. *See* Settlement § 9.7(a). Furthermore, even if an appeal is unsuccessful, a Class Member may submit another Claim Package.⁸⁹

vi. Anti-Fraud Provisions

To ensure that only Retired Players actually affected by neurocognitive or neuromuscular impairment—and their Representative and Derivative Claimants—receive Monetary Awards, the Settlement establishes an audit system. Objectors incorrectly contend that these are “anti-payment provisions.” Morey Obj. at 77 (internal quotation marks omitted).

Audits are particularly appropriate in this case because the Settlement offers substantial cash awards; Class Members will receive hundreds of thousands, if not millions of dollars. *See* Manual for Complex Litigation § 21.66 (4th ed.) (“Large claims might warrant a field audit to check for inaccuracies or fraud.”). Additionally, the proposed audits are reasonable in scope. The Claims Administrator will randomly audit 10% of each month’s successful award applications. *See* Settlement § 10.3(c). It will also audit claims that raise predetermined red flags, such as those from Class Members who already submitted an unsuccessful Claim Package in the last year. *See id.* § 10.3(d). Though an audit may require Class Members to submit additional documentation, only those who unreasonably refuse to comply with the procedure will forfeit their claims. *See id.* §§ 10.3(b)(ii), 10.3(e). While the NFL Parties may conduct their own audits, they may only do so in good faith and at their expense. *Id.* § 10.3(a).

F. Other Objections

i. Education Fund

Objectors argue that the Education Fund, which provides \$10 million in funding to youth football safety initiatives and programs educating Retired Players about their NFL CBA Medical

⁸⁹ Repeated Claim Package submissions may trigger audits. *See infra* Section V.E.vi.

and Disability Benefits, is an improper *cy pres* distribution and should be eliminated. *See* Heimburger Obj. at 21-23; Armstrong Obj. at 29-34; Settlement § 12.1. The Education Fund is not a *cy pres* distribution, and even if it were, it is reasonable.

Cy pres involves the distribution of unclaimed or residual settlement funds to third parties. *Klier v. Elf Atochem N. Am., Inc.*, 658 F.3d 468, 474 (5th Cir. 2011) (“[A] *cy pres* distribution is designed to be a way for a court to put any *unclaimed* settlement funds to their next best compensation use” (emphasis added) (internal quotation marks omitted)); *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2008 WL 4542669, at *3 (E.D. Pa. Oct. 3, 2008) (noting that federal courts create *cy pres* distributions based upon their “broad discretionary powers to shape equitable decrees for distributing *unclaimed* class action funds” (emphasis added)); *Schwartz v. Dallas Cowboys Football Club, Ltd.*, 362 F. Supp. 2d 574, 576 (E.D. Pa. 2005) (“A court may also utilize *cy pres* principles to distribute *unclaimed funds* from a class action settlement.” (emphasis added)).

In this case, the Education Fund is a separate allocation distinct from the Monetary Award Fund and the BAP Fund, and does not direct how unclaimed funds should be distributed. Eliminating the Education Fund would not result in more Class Members receiving Monetary Awards or baseline assessment examinations because the NFL Parties have already guaranteed these benefits to eligible claimants. Moreover, Education Fund benefits inure in part directly to Class Members; the Fund educates Retired Players about their medical and disability benefits under their Collective Bargaining Agreements.

Even if the Education Fund were a *cy pres* distribution, it is nonetheless justified. In *Baby Products*, the Third Circuit noted that *cy pres* provisions are appropriate if a settlement contains sufficient direct benefit to the class. 708 F.3d at 174; *see also id.* at 176 (“We do not intend to

raise the bar for obtaining approval of a class action settlement simply because it includes a *cy pres* provision.”).

Direct distributions to Class Members constitute the vast majority of the Settlement. *Compare* Settlement § 23.1(c) (noting Education Fund is \$10 million), *with* Class Counsel’s Actuarial Materials at 3 (estimating “total compensation of approximately \$950 million”) *and* NFL Parties’ Actuarial Materials ¶ 20 (estimating “approximately \$900 million will be paid out”). Additionally, by funding football safety initiatives, the Education Fund deals with the chief harm alleged in the Class Action Complaint: the risks of head injury from football. *See Baby Prods.*, 708 F.3d at 172 (“We join other courts of appeals in holding that a district court does not abuse its discretion by approving a class action settlement agreement that includes a *cy pres* component directing the distribution of excess settlement funds to a third party to be used for a purpose related to the class injury.”); *Harlan v. Transworld Sys., Inc.*, No. 13-5882, 2015 WL 505400, at *10 (E.D. Pa. Feb. 6, 2015) (approving a settlement with a *cy pres* distribution when it assisted “Class Members in knowing and protecting their rights”); *cf. Schwartz*, 362 F. Supp. 2d at 577 (E.D. Pa. 2005) (rejecting a *cy pres* “distribution to either a law school’s legal clinic or a charter school . . . [because it] does not touch upon the subject matter of the law suit (football or sports-related activities)”).

The Education Fund is not a *cy pres* distribution. Even if it were, it is reasonable.

ii. Statutes of Limitations Waiver

Class Counsel negotiated a statutes of limitations waiver for any Representative Claimants of Retired Players who died on or after January 1, 2006. Representative Claimants of Retired Players who died prior to January 1, 2006 must demonstrate that their claims would not be barred by the relevant state’s statute of limitations in order to be eligible for Monetary Awards.

Settlement § 6.2(b). For statutes of limitations analyses, the Settlement deems Class Members who have not commenced individual suits against the NFL Parties to have filed their claims on June 25, 2014, the date Class Counsel moved for preliminary approval of the Settlement. *See id.* §§ 2.1(pppp), 6.2(b).

Objectors challenge the 2006 cutoff date for any waiver of a statute of limitations. *See D. Williams Obj.* at 1-4, ECF No. 6221. That additional Class Members may have benefitted from a more generous rule does not render the 2006 cutoff date unfair. “[L]ines must be drawn somewhere, and the objectors have failed to demonstrate that the line drawn here was not reasonable.” *Deepwater Horizon Economic Loss Settlement*, 910 F. Supp. 2d at 949. Moreover, that Class Counsel were able to negotiate any waiver represents a benefit to the Class.

Objectors also argue that the June 25, 2014 filing date—the date Class Counsel moved for preliminary approval—is prejudicial. They claim that under *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), the statutes of limitations for their claims were tolled as of August 17, 2011, the date Class Counsel filed the *Easterling* putative class action, and that the date Class Counsel moved for preliminary approval is irrelevant. *See Kinard Obj.* at 3-4, ECF No. 6219.

Contrary to Objectors’ assertion, if a state has adopted an analogue to the *American Pipe* rule,⁹⁰ Class Members will be able to argue that their claims are timely. The Court will consider all applicable state law—including tolling rules—to determine if a Class Member is eligible for a Monetary Award. Moreover, the Parties recognize the Court’s authority to conduct a statute of limitations analysis for each wrongful death or survival claim. *See Settlement* § 6.2(b)

(recognizing that a “Representative Claimant of a deceased Retired NFL Football Player will be

⁹⁰ *American Pipe* itself does not apply because the doctrine deals only with federal statutes of limitations, and the Class Action Complaint included only state law claims. *See McLaughlin on Class Actions* § 3:15 (11th ed.) (“*American Pipe* did not itself announce any tolling rule applicable to state law claims.”); *Vincent v. Money Store*, 915 F. Supp. 2d 553, 561 (S.D.N.Y. 2013) (“The plaintiffs must look to any state analogue to *American Pipe* tolling rather than *American Pipe* itself.”).

eligible for a Monetary Award . . . if the Court determines that a wrongful death or survival claim filed by the Representative Claimant would not be barred by the statute of limitations under applicable state law”); Parties’ Joint Proposed Findings of Fact ¶ 414, ECF No. 6497.

iii. Releases

Objectors argue that the Releases are overbroad because they release CTE claims. This position, however, is merely an extension of the argument that the Settlement does not compensate CTE. *See e.g.*, Morey Obj. at 28 (“Class Counsel and the NFL have offered no justification for the Settlement’s failure to compensate current and future cases of CTE—while at the same time requiring a release of all CTE claims.”); Alexander Obj. at 9-10. Because this is incorrect, *see supra* Section V.A, this objection is overruled.

Indeed, failing to release CTE when its alleged symptoms are included in other Qualifying Diagnoses would permit Class Members double recovery. *See Prudential*, 148 F.3d at 326 (holding that the settlement properly released all claims arising out of “a common scheme of deceptive sales practices”). Moreover, a broad release that “achiev[es] global peace is a valid, and valuable, incentive to class action settlements.” *Sullivan*, 667 F.3d at 311 (rejecting dissenting colleagues’ suggestion to limit class to those with colorable claims because “those ultimately excluded would no doubt go right back into court to continue to assert their claims”); *see also In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 261 F.3d 355, 366 (3d Cir. 2001) (noting that “permitting parties to enter into comprehensive settlements that prevent relitigation of settled questions” serves an “important policy interest of judicial economy” (internal quotation marks omitted)).⁹¹

⁹¹ Objectors also argue that the Releases could be construed as a release of claims in *Dent*, a related lawsuit against the NFL Parties. *See Armstrong* Obj. at 34. This objection is now moot. On December 17, 2014, the *Dent* court held that the plaintiffs’ claims were preempted by their Collective Bargaining Agreements. Order, *Dent*, No. 14-2324, ECF No. 106 (N.D. Cal. Dec. 17, 2014); *supra* Section IV.B.iv.

The Releases are fair and reasonable.

iv. NFL Parties' Security

Objectors question whether sufficient funds will exist throughout the 65-year life of the Monetary Award Fund to pay all valid claims. Specifically, they challenge the security that the Statutory Trust provides. The Settlement's security provisions, however, are adequate.

"No later than the tenth anniversary of the Effective Date,"⁹² the NFL Parties will establish a Statutory Trust that as of the tenth anniversary date "shall contain funds that, in the reasonable belief of the NFL Parties . . . will be sufficient to satisfy the NFL Parties' remaining anticipated payment obligations." Settlement § 25.6(d). The NFL Parties' creditors will not be able to access this fund, and its sole purpose will be to ensure that funds are available to pay Monetary Awards. *Id.* (noting withdrawals will only be permitted to pay claims, maintain the Trust, return excess security, and wind down the Trust when the Settlement expires).

Objectors argue that the NFL Parties' "reasonable belief" of what is sufficient is an illusory protection because financial predictions decades in advance are unreliable. Utecht Obj. at 11 (quoting Settlement § 25.6(d)); *see* Utecht Supplemental Obj. at 7, ECF No. 6437. Several factors, however, limit the uncertainty the NFL Parties will face when determining how much to place into the Trust. The pool of Retired Players, and thus potential claimants, is finite.

Additionally, other than adjustments for inflation, Monetary Awards are fixed sums. Most importantly, the Settlement delays creation of the Trust precisely to allow the NFL Parties to

After the plaintiffs failed to amend their complaint, the court dismissed the case. *See* Judgment, *Dent*, No. 14-2324, ECF No. 107 (N.D. Cal. Dec. 31, 2014).

⁹² Objectors do not seriously question the security for the first ten years of the Settlement. The NFL Parties promise to pay \$120 million over the first six months of the Settlement. *See* Settlement § 23.3(b). Thereafter, they will refill the Settlement Trust Account based on the Claims Administrator's monthly funding requests. *Id.* § 23.3(b)(ii). A targeted reserve will ensure a surplus over the life of the Settlement. *See id.* § 23.3(b)(v). The NFL Parties also warrant that they will maintain an investment grade rating on their Stadium Program Bonds during this ten-year period to serve as additional security. *See id.* § 25.6(a).

collect ten years of data regarding payouts from the Monetary Award Fund. The NFL Parties will use this data to create a reasonable estimate of the financial needs of the MAF for its remaining 55 years. Claims data from Retired Players who retired decades ago will provide a useful estimate of the funds required to ensure that younger Retired Players will receive payment as they age.

Moreover, independent of the Statutory Trust, the NFL Parties remain personally liable for their payments under the Settlement.⁹³ In the event of material default, the Settlement provides that the Court may nullify the Releases, allowing Class Members to return to the tort system. *See* Settlement § 25.6(g). Though Objectors are correct that anything can happen over the course of 55 years, the personal liability of the NFL Parties nonetheless provides real security. The NFL Parties have substantial and reliable revenue streams. *See, e.g.*, Morey Obj. at 58 (noting that the NFL Parties have \$10 billion in annual revenue in part because of renewable TV deals). While the NFL Parties' income is not projected to decline, the Settlement's pool of potential claimants will decrease in size as Class Members age. Thus, the Settlement becomes comparatively less of a liability to the NFL Parties as time passes.

Finally, Objectors insist on a “*fully collateralized guaranty*,” but provide no legal precedent in support of that requirement.⁹⁴ Utecht Final Obj. at 7, ECF No. 6454. In sum, the NFL Parties' proffered security is reasonable.

⁹³ Objectors contend that the NFL Parties are not personally liable because they have “agreed only to pay money into certain trusts from which awards may be paid.” Utecht Supplemental Obj. at 10, ECF No. 6437. This is incorrect. Independent of the provisions establishing the Statutory Trust, the Settlement states that “the NFL Parties will pay . . . money sufficient to make all payments [in the Monetary Award Fund.]” Settlement § 23.1. Moreover, trust law mandates the inclusion of the Settlement provision cited by Objectors. Pursuant to trust law, after initial instructions, the entity that establishes a trust may not order the trustee to make specific disbursements.

⁹⁴ Objectors repeatedly allege that the NFL Parties and Co-Lead Class Counsel falsely represented the security provisions of the Settlement. *See* Utecht Supplemental Obj. at 14-16; Utecht Final Obj. at 1,

v. Objector Signature Requirement

Amici contend that requiring Class Members to personally sign their objections to the Settlement is an unnecessary hurdle designed to deter filings. *See* Mem. of Public Citizen at 9-11. However, they cite no relevant support for their argument. Requiring Class Members to personally sign their objections does not violate Federal Rule of Civil Procedure 23(c)(2)(B)(iv), which allows Class Members to “enter an appearance through an attorney,” or 28 U.S.C. § 1654, which allows parties to “plead and conduct their [] cases . . . by counsel.” *See Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 355 (6th Cir. 2009) (holding that “the district court appropriately exercised its power by requiring individually signed opt-out forms” and noting that the right in the Michigan Constitution to prosecute a suit by an attorney did not save the objector’s argument).

On the contrary, a class member’s signature is commonly required to object or opt out. *See, e.g., Georgine v. Amchem Prods., Inc.*, 160 F.R.D. 478, 501 n.43 (E.D. Pa. 1995) (noting denial of requests “to permit attorneys’ signatures on exclusion request forms”); *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, MDL No. 2047, 2012 WL 92498, at *15 (E.D. La. Jan. 10, 2012) (“All objections must be signed by the individual Class Member . . .”).

vi. Lien Resolution Program

Amici challenge the Lien Resolution requirements in the Settlement, claiming they “could indefinitely block payments to [C]lass [M]embers.” Mem. of Public Citizen at 11. Amici argue that payments will necessarily be delayed because the Settlement mandates satisfaction of a Class Member’s governmental health insurance liens before the payment of any award. *See*

ECF No. 6454. This claim has no merit. The terms of the Settlement were readily available for Class Members to inspect, and no evidence of fraudulent intent exists.

Settlement § 11.3(g). Contrary to Amici’s characterization, however, the Lien Resolution program that accompanies these provisions is a substantial benefit for Class Members.

The NFL Parties’ insistence on lien satisfaction as a precondition to disbursement of awards is reasonable. Similar lien satisfaction provisions exist in virtually all mass tort and class action personal injury settlements. Garretson Aff. ¶ 23. Federal law mandates Medicare’s secondary payer status, and requires states to seek reimbursement as a condition of receiving Medicaid funds. 42 U.S.C. § 1395y(b)(2)(B)(ii)-(iv); 42 U.S.C. § 1396a(a)(25). Settling tortfeasors that fail to comply with these reimbursement requirements face significant penalties. *See, e.g.*, 42 U.S.C. § 1395y(b)(2)(B)(iii) (authorizing the United States to sue for double damages); Garretson Aff. ¶ 23.

The Lien Resolution program will streamline this necessary process and ensure that Class Members receive Monetary Awards as quickly as possible. The Lien Resolution Administrator, Garretson Resolution Group (“GRG”), pioneered the practice and has successfully administered it in four other mass tort settlements. *See In re Zyprexa Prods. Liab. Litig.*, 451 F. Supp. 2d 458, 461 (E.D.N.Y. 2006) (praising “unique series of agreements” that could “provide a model for the handling of Medicare and Medicaid liens in future mass actions”); Garretson Aff. ¶ 25. GRG intends to execute an aggregate resolution of many of Class Members’ claims, avoiding the delays inherent in individual processing. *See* Garretson Aff. ¶¶ 28(a)(1)-(4). For the remaining Class Members, GRG expects to be able to determine “holdback” amounts that will allow for immediate disbursement. GRG will estimate the expected future costs of a particular Qualifying Diagnosis, and withhold that sum from a Class Member’s Monetary Award, distributing the remainder to the Class Member immediately. In the event that a Class Member’s medical costs

ultimately fall short of this initial estimate, he will be entitled to a refund. *See id.* ¶¶ 28(b)(2), 29(a)(2).

vii. Parties' Experts

Objectors argue that the scientific experts retained by the Parties cannot be trusted because they received compensation for their services. *See* Morey Final Obj. at 3, 9-11 (arguing against use of “bought-and-paid-for experts”). This argument has no merit.

The Parties' experts have extensive qualifications. Included among them are professors of psychology, neuropsychology, neurosurgery, neurology, psychiatry, and epidemiology, as well as a board-certified neurologist with 39 years of clinical practice experience and a licensed psychologist. Each expert deals routinely with neurodegenerative conditions or the effects of traumatic brain injury. Collectively, the experts have authored over 850 peer-reviewed scientific articles.⁹⁵ Several experts provided months of assistance throughout the negotiation process to ensure that the Settlement was grounded in current science. It is unreasonable to expect any expert to provide such a substantial contribution for free.

A presumption of bias does not arise merely because an expert receives compensation. *See Richardson v. Perales*, 402 U.S. 389, 403 (1971). Moreover, that some of these experts work at institutions that have received grants from the NFL Parties and their affiliates does not compromise these experts' objectivity. *See* Morey Final Obj. at 10-11. For example, the Boston University CTE Center, with which Drs. McKee and Stern are associated, has received donations from the NFL Parties. Yet the Objectors do not question the objectivity of Drs. McKee and Stern, whose studies they rely upon. *See Chronic Traumatic Encephalopathy*, Boston University

⁹⁵ *See generally* Dr. Millis Decl. ¶¶ 2-9; Dr. Schneider Decl. ¶¶ 2-12; Dr. Yaffe Decl. ¶¶ 2-8; Dr. Fischer Decl. ¶¶ 2-3; Dr. Giza Decl. ¶¶ 2-9; Dr. Hovda Decl. ¶¶ 2-11; Dr. Kelip Decl. ¶¶ 2, 4; Dr. Hamilton Decl. ¶¶ 1, 2, 6.

School of Medicine, <http://www.bumc.bu.edu/supportingbusm/research/brain/cte/> (last accessed Apr. 21, 2015) (noting Center is “[s]upported by grants from . . . the NFL”).

viii. Parties’ Disclosures

Objectors argue that they lacked the information to properly evaluate the Settlement because they did not have access to materials the Parties relied on during negotiations. *See* Morey Obj. at 80-81 (claiming that “[C]lass [M]embers have been left in the dark”); Mot. for Disclosure of Docs. Relevant to Fairness of Settlement, ECF No. 6461 (moving for access to documents relating to CTE, and the NFL Parties’ insurance). These claims largely repeat those made in prior requests for discovery. *See, e.g.*, Mem. in Supp. of Mot. for Disc. at 8, ECF No. 6169-1 (requesting “information Class Counsel relied on in entering the preliminary settlement”). I have already denied Objectors’ prior requests, with good reason. *See* Order Den. Mots. for Disc., ECF No. 6245.

Objectors have no absolute right to discovery. *Community Bank*, 418 F.3d at 316. Though discovery may be appropriate if the record is inadequate to support approval of a settlement or if objectors are denied meaningful participation in a fairness hearing, neither circumstance exists here. *Id.* The Parties, Objectors, and Amici collectively submitted dozens of scientific articles and 22 expert declarations discussing the critical scientific issues underlying the Settlement. Objectors’ concerns also materially impacted the Settlement—the Parties revised the agreement to address deficiencies identified at the Fairness Hearing. *See* Parties’ Joint Amendment.

Objectors also argue that because “[b]rain damage from playing football is a public health issue,” the NFL Parties must disclose what they knew about the dangers of concussions. Alexander Obj. at 5; *see also* Pyka Obj. at 1, ECF No. 6359 (“I and every parent along with the players had and have a right to know of the dangers of playing football . . .”). Settlements,

however, are private compromises, and the NFL Parties need not make this information public to obtain approval. *See, e.g., Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010) (holding that class action settlement that admitted no wrongdoing and denied all liability was a “binding and enforceable contract”); *Ripley v. Sunoco, Inc.*, 287 F.R.D. 300, 318 (E.D. Pa. 2012) (approving class action settlement that admitted no wrongdoing). Nonetheless, the Settlement contributes to the public’s knowledge on these issues. Subject to the consent of Retired Players, data from baseline assessment examinations will be used in medical research about safety and injury prevention in football. *See* Settlement § 5.10(a).

ix. Opt-Out Procedure

Objectors reiterate their unsuccessful request for an opportunity to opt out after the Fairness Hearing. They claim their request is justified because being forced to choose between opting out and objecting is coercive, and because notice was inadequate for Retired Players to understand the ramifications of the Settlement. *See* Utecht Obj. at 3-6; Duerson Obj. at 28-29. I have already denied this request, and these additional arguments do not demonstrate that the opt-out structure was unfair. *See* Order, Oct. 9, 2014, ECF No. 6204.

Due process does not require a second opt-out period. In a class action, class members’ rights are sufficiently protected when there is: “(1) adequate notice to the class; (2) an opportunity for class members to be heard and participate; (3) the right of class members to opt out; and (4) adequate representation by the lead plaintiff(s).” *Cobell v. Salazar*, 679 F.3d 909, 922 (D.C. Cir. 2012) (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985)). As discussed *supra*, each of these requirements is satisfied. Notice cogently described the key elements of the Settlement, and Class Members had 90 days to review the agreement and either opt out or object. *See supra* Section III. Class Counsel and the Class Representatives fought

zealously for Class Members, and no fundamental conflicts of interest existed to undermine the adequacy of their representation. *See supra* Section II.D.

The choice between opting out and objecting is not coercive. It is well established that “class members may either object or opt out, but they cannot do both.” Newberg on Class Actions § 13:23 (5th ed.). Moreover, the Third Circuit has implicitly rejected Objectors’ position; it would be impossible to consider “the reaction of the class to the settlement” for the purposes of Rule 23(e)(2) if Class Members were allowed to opt out up until the point of final approval. *Girsh*, 521 F.2d at 157 (internal quotation marks omitted); *see also Olden v. LaFarge Corp.*, 472 F. Supp. 2d 922, 936 (E.D. Mich. 2007) (“There are several examples of federal cases where the opt-out deadline matches the objection deadline.”). Thus, the opt-out procedure was reasonable, and no additional opportunity to opt out was required.

VI. Conclusion

For the reasons set forth above, I will certify the proposed Class pursuant to Rule 23(a) and 23(b)(3). I will also approve the Settlement as fair, reasonable, and adequate pursuant to Rule 23(e).

s/ Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

- (i) All living NFL Football Players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players, or were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and who no longer are under contract to a Member Club and are not seeking active employment as players with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club (“Retired NFL Football Players”); and
- (ii) Authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players (“Representative Claimants”); and
- (iii) Spouses, parents, children who are dependents, or any other persons who properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player (“Derivative Claimants”).

The Subclasses are defined as follows:

- (i) “Subclass 1” means Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants.
- (ii) “Subclass 2” means Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a post-mortem diagnosis of CTE.

3. The Court finds that the Settlement Class satisfies the applicable prerequisites for class action treatment under Federal Rules of Civil Procedure 23(a) and (b). The Settlement Class Members are so numerous that their joinder is impracticable. There are questions of law and fact common to the Class and Subclasses. The claims of the Class Representatives and Subclass Representatives are typical of the Settlement Class Members and the respective Subclass Members. The Class Representatives and Subclass Representatives and Co-Lead Class Counsel, Class Counsel and Subclass Counsel have fairly and adequately

represented and protected the interests of all Settlement Class Members. The questions of law or fact common to the Class and Subclasses predominate over any questions affecting only individual Settlement Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. The Court finds that the dissemination of the Settlement Class Notice and the publication of the Summary Notice were implemented in accordance with the Order granting preliminary approval, and satisfy the requirements of Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e), the United States Constitution and other applicable laws and rules, and constituted the best notice practicable under the circumstances. The Notice given by the NFL Parties to state and federal officials pursuant to 28 U.S.C. § 1715 fully satisfied the requirements of that statute.

5. The Court confirms the appointment of Shawn Wooden and Kevin Turner as Class Representatives and Shawn Wooden as Subclass 1 Representative and Kevin Turner as Subclass 2 Representative.

6. Pursuant to Federal Rule of Civil Procedure 23(g), the Court confirms the appointment of Christopher A. Seeger, Sol Weiss, Steven C. Marks, Gene Locks, Arnold Levin and Dianne M. Nast as Class Counsel. In addition the Court confirms the appointment of Christopher A. Seeger and Sol Weiss as Co-Lead Class Counsel, and confirms the appointments of Arnold Levin and Dianne M. Nast as Subclass Counsel for Subclasses 1 and 2, respectively.

7. Pursuant to Federal Rule of Civil Procedure 23, the Court finds that the Settlement Agreement is fair, reasonable and adequate and approves the Settlement Agreement in its entirety.

8. The Court expressly incorporates into this Final Order and Judgment: (a) the Settlement Agreement and exhibits originally filed with the Court on June 25, 2014, as amended and filed on February 13, 2015, and (b) the Settlement Class Notice Plan and the Summary Notice, both of which were filed with the Court on June 25, 2014.

9. The Parties are ordered to implement each and every obligation set forth in the Settlement Agreement in accordance with the terms and provisions of the Settlement Agreement.

10. So there can be no misunderstanding, Article XVIII of the Settlement Agreement is expressly incorporated in this Order. Therefore the Settlement Class, the Class and Subclass Representatives and each Settlement Class Member, on his or her own behalf and on behalf of his or her respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, heirs, next of kin, estates, beneficiaries, executors, administrators, and any natural, legal, or juridical person or entity to the extent he, she, or it is entitled to assert any claim on behalf of any Settlement Class Member (the "Releasers"), waive and release, forever discharge and hold harmless the Released Parties, and each of them, of and from all Released Claims.

11. Notwithstanding anything to the contrary in this Final Order and Judgment, this Final Order and Judgment and the Settlement Agreement are not intended to and do not effect a release of any rights or obligations that any insurer has under or in relation to any contract or policy of insurance to any named insured, insured, additional insured, or other

insured person or entity thereunder, including those persons or entities referred to in Section 2.1(bbbb)(i)-(ii) of the Settlement Agreement.

12. The Court confirms the appointment of The Garretson Resolution Group, Inc. as the BAP Administrator, BrownGreer PLC as the Claims Administrator, The Garretson Resolution Group, Inc. as the Lien Resolution Administrator and Citibank, N.A. as the Trustee, and confirms that the Court retains continuing jurisdiction over those appointed. Pursuant to Federal Rule of Civil Procedure 53 and the inherent authority of the Court, the Court appoints Wendell Pritchett and Jo-Ann M. Verrier as Special Master to perform the duties of the Special Master as set forth in the Settlement Agreement for a five-year term commencing from the Effective Date of the Settlement Agreement.

13. As provided in the Settlement Agreement, this Final Order and Judgment and the related documents and any actions taken by the NFL Parties or the Released Parties in the negotiation, execution, or satisfaction of the Settlement Agreement: (a) do not and shall not, in any event, constitute, or be construed as, an admission of any liability or wrongdoing, or recognition of the validity of any claim made by the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member in this or any other action or proceeding; and (b) shall not, in any way, be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, of any kind, or used in any other fashion, by the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member, Class Counsel, or any of the Released Parties in any litigation, action, hearing, or any judicial, arbitral, administrative, regulatory or other proceeding for any purpose, except a proceeding to resolve a dispute arising under, or to enforce, the Settlement Agreement. Neither the Settlement Agreement nor any of its provisions, negotiations, statements, or court proceedings relating to its

provisions, nor any actions undertaken in this Settlement Agreement, will be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, or admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, or as a waiver by the Released Parties of any applicable defense, or as a waiver by the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member, of any claims, causes of action, or remedies. This Paragraph shall not apply to disputes between the NFL Parties and their insurers, as to which the NFL Parties reserve all rights.

14. The Class Action Complaint is dismissed with prejudice, without further costs, including claims for interest, penalties, costs and attorneys' fees, except that motions for an award of attorneys' fees and reasonable incurred costs, as contemplated by the Parties in Section 21.1 of the Settlement Agreement, may be filed at an appropriate time to be determined by the Court, after the Effective Date of the Settlement Agreement.

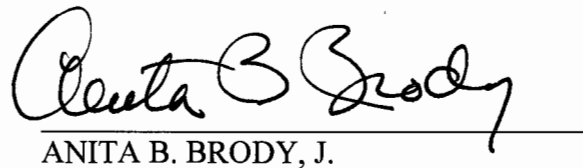
15. All Related Lawsuits pending in the Court are dismissed with prejudice.

16. The Court retains continuing and exclusive jurisdiction over this action including jurisdiction over the Parties and their counsel, all Settlement Class Members, the Special Master, BAP Administrator, Claims Administrator, Lien Resolution Administrator, Appeals Advisory Panel, Appeals Advisory Panel Consultants, and Trustee. In accordance with the terms of the Settlement Agreement, the Court retains continuing and exclusive jurisdiction to interpret, implement, administer and enforce the Settlement Agreement, and to implement and complete the claims administration and distribution process. The Court also retains continuing jurisdiction over any "qualified settlement funds," that are established under the Settlement

Agreement as defined under § 1.468B-1 of the Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986, as amended.

17. Without further approval from the Court, and without the express written consent of Class Counsel and Counsel for the NFL Parties, the Settlement Agreement is not subject to any change, modification, amendment, or addition.

18. The terms of the Settlement Agreement and of this Final Order and Judgment are forever binding on the Parties, as well as on their respective heirs, executors, administrators, predecessors, successors, affiliates and assigns. The Opt Outs are excluded from the Settlement Class pursuant to request and are not bound by the terms of the Settlement Agreement or this Final Order and Judgment. The Claims Administrator is **DIRECTED** to post a list of Opt Outs forthwith.


ANITA B. BRODY, J.

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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | | |
|------------------------------------|---|----------------------|
| IN RE: NATIONAL FOOTBALL | : | No. 2:12-md-02323-AB |
| LEAGUE PLAYERS' CONCUSSION | : | |
| INJURY LITIGATION | : | MDL No. 2323 |
| <hr/> | | |
| Kevin Turner and Shawn Wooden, | : | |
| <i>on behalf of themselves and</i> | : | |
| <i>others similarly situated,</i> | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | |
| | : | |
| National Football League and | : | |
| NFL Properties, LLC, | : | |
| successor-in-interest to | : | |
| NFL Properties, Inc., | : | |
| Defendants. | : | |
| <hr/> | | |
| THIS DOCUMENT RELATES TO: | : | |
| ALL ACTIONS | : | |

AMENDED FINAL ORDER AND JUDGMENT¹

AND NOW, this 8th day of MAY, 2015, in accordance with the Court's

Memorandum (ECF. No. 6509), it is **ORDERED**:

1. The Court has jurisdiction over the subject matter of this action.
2. The Court certifies the Settlement Class and Subclasses under Federal

Rule of Civil Procedure 23.

¹ Unless otherwise noted, the terms used in this Order that are defined in the Settlement Agreement have the same meanings in this Order as in the Settlement Agreement.

The Settlement Class is defined as follows:

- (i) All living NFL Football Players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players, or were formerly on any roster, including preseason, regular season, or postseason, of any such Member Club or league and who no longer are under contract to a Member Club and are not seeking active employment as players with any Member Club, whether signed to a roster or signed to any practice squad, developmental squad, or taxi squad of a Member Club (“Retired NFL Football Players”); and
- (ii) Authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players (“Representative Claimants”); and
- (iii) Spouses, parents, children who are dependents, or any other persons who properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player (“Derivative Claimants”).

The Subclasses are defined as follows:

- (i) “Subclass 1” means Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants.
- (ii) “Subclass 2” means Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to death or who died prior to the date of the Preliminary Approval and Class Certification Order and who received a post-mortem diagnosis of CTE.

3. The Court finds that the Settlement Class satisfies the applicable prerequisites for class action treatment under Federal Rules of Civil Procedure 23(a) and (b). The Settlement Class Members are so numerous that their joinder is impracticable. There are questions of law and fact common to the Class and Subclasses. The claims of the Class Representatives and Subclass Representatives are typical of the Settlement Class Members and the respective Subclass Members. The Class Representatives and Subclass Representatives and

Co-Lead Class Counsel, Class Counsel and Subclass Counsel have fairly and adequately represented and protected the interests of all Settlement Class Members. The questions of law or fact common to the Class and Subclasses predominate over any questions affecting only individual Settlement Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. The Court finds that the dissemination of the Settlement Class Notice and the publication of the Summary Notice were implemented in accordance with the Order granting preliminary approval, and satisfy the requirements of Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e), the United States Constitution and other applicable laws and rules, and constituted the best notice practicable under the circumstances. The Notice given by the NFL Parties to state and federal officials pursuant to 28 U.S.C. § 1715 fully satisfied the requirements of that statute.

5. The Court confirms the appointment of Shawn Wooden and Kevin Turner as Class Representatives and Shawn Wooden as Subclass 1 Representative and Kevin Turner as Subclass 2 Representative.

6. Pursuant to Federal Rule of Civil Procedure 23(g), the Court confirms the appointment of Christopher A. Seeger, Sol Weiss, Steven C. Marks, Gene Locks, Arnold Levin and Dianne M. Nast as Class Counsel. In addition the Court confirms the appointment of Christopher A. Seeger and Sol Weiss as Co-Lead Class Counsel, and confirms the appointments of Arnold Levin and Dianne M. Nast as Subclass Counsel for Subclasses 1 and 2, respectively.

7. Pursuant to Federal Rule of Civil Procedure 23, the Court finds that the Settlement Agreement is fair, reasonable and adequate and approves the Settlement Agreement in its entirety.

8. The Court expressly incorporates into this Final Order and Judgment: (a) the Settlement Agreement and exhibits originally filed with the Court on June 25, 2014, as amended and filed on February 13, 2015, and (b) the Settlement Class Notice Plan and the Summary Notice, both of which were filed with the Court on June 25, 2014.

9. The Parties are ordered to implement each and every obligation set forth in the Settlement Agreement in accordance with the terms and provisions of the Settlement Agreement.

10. So there can be no misunderstanding, Article XVIII of the Settlement Agreement is expressly incorporated in this Order. Therefore the Settlement Class, the Class and Subclass Representatives and each Settlement Class Member, on his or her own behalf and on behalf of his or her respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, heirs, next of kin, estates, beneficiaries, executors, administrators, and any natural, legal, or juridical person or entity to the extent he, she, or it is entitled to assert any claim on behalf of any Settlement Class Member (the "Releasors"), waive and release, forever discharge and hold harmless the Released Parties, and each of them, of and from all Released Claims.

11. Any judgment or award obtained by the Releasors against any alleged tortfeasor, co-tortfeasor, co-conspirator or co-obligor, other than Riddell, by reason of judgment or settlement, for any claims that are or could have been asserted in the Class Action Complaint or in any Related Lawsuit, or that arise out of or relate to any claims that are or could have been

asserted in the Class Action Complaint or in any Related Lawsuit, or that arise out of or relate to any facts in connection with the Class Action Complaint or any Related Lawsuit (collectively, “Tortfeasors”), shall be reduced by the amount or percentage, if any, necessary under applicable law to relieve the Released Parties of all liability to such Tortfeasors on claims for contribution or indemnity (whether styled as a claim for contribution, indemnity or otherwise). Such judgment reduction, partial or complete release, settlement credit, relief, or setoff, if any, shall be in an amount or percentage sufficient under applicable law to compensate such Tortfeasors for the loss of any such claims for contribution or indemnity (whether styled as a claim for contribution, indemnity or otherwise) against the Released Parties.

12. Notwithstanding anything to the contrary in this Final Order and Judgment, this Final Order and Judgment and the Settlement Agreement are not intended to and do not effect a release of any rights or obligations that any insurer has under or in relation to any contract or policy of insurance to any named insured, insured, additional insured, or other insured person or entity thereunder, including those persons or entities referred to in Section 2.1(bbbb)(i)-(ii) of the Settlement Agreement.

13. The Court confirms the appointment of The Garretson Resolution Group, Inc. as the BAP Administrator, BrownGreer PLC as the Claims Administrator, The Garretson Resolution Group, Inc. as the Lien Resolution Administrator and Citibank, N.A. as the Trustee, and confirms that the Court retains continuing jurisdiction over those appointed. Pursuant to Federal Rule of Civil Procedure 53 and the inherent authority of the Court, the Court appoints Wendell Pritchett and Jo-Ann M. Verrier as Special Master to perform the duties of the Special Master as set forth in the Settlement Agreement for a five-year term commencing from the Effective Date of the Settlement Agreement.

14. As provided in the Settlement Agreement, this Final Order and Judgment and the related documents and any actions taken by the NFL Parties or the Released Parties in the negotiation, execution, or satisfaction of the Settlement Agreement: (a) do not and shall not, in any event, constitute, or be construed as, an admission of any liability or wrongdoing, or recognition of the validity of any claim made by the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member in this or any other action or proceeding; and (b) shall not, in any way, be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, of any kind, or used in any other fashion, by the Class and Subclass Representatives, the Settlement Class, any Settlement Class Member, Class Counsel, or any of the Released Parties in any litigation, action, hearing, or any judicial, arbitral, administrative, regulatory or other proceeding for any purpose, except a proceeding to resolve a dispute arising under, or to enforce, the Settlement Agreement. Neither the Settlement Agreement nor any of its provisions, negotiations, statements, or court proceedings relating to its provisions, nor any actions undertaken in this Settlement Agreement, will be construed as, offered as, received as, used as, or deemed to be evidence, admissible or otherwise, or admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, or as a waiver by the Released Parties of any applicable defense, or as a waiver by the Class and Subclass Representatives, the Settlement Class, or any Settlement Class Member, of any claims, causes of action, or remedies. This Paragraph shall not apply to disputes between the NFL Parties and their insurers, as to which the NFL Parties reserve all rights.

15. The Class Action Complaint is dismissed with prejudice, without further costs, including claims for interest, penalties, costs and attorneys' fees, except that motions for an award of attorneys' fees and reasonable incurred costs, as contemplated by the Parties in Section 21.1 of the Settlement Agreement, may be filed at an appropriate time to be determined by the Court, after the Effective Date of the Settlement Agreement.

16. All Related Lawsuits pending in the Court are dismissed with prejudice.

17. The Court retains continuing and exclusive jurisdiction over this action including jurisdiction over the Parties and their counsel, all Settlement Class Members, the Special Master, BAP Administrator, Claims Administrator, Lien Resolution Administrator, Appeals Advisory Panel, Appeals Advisory Panel Consultants, and Trustee. In accordance with the terms of the Settlement Agreement, the Court retains continuing and exclusive jurisdiction to interpret, implement, administer and enforce the Settlement Agreement, and to implement and complete the claims administration and distribution process. The Court also retains continuing jurisdiction over any "qualified settlement funds," that are established under the Settlement Agreement as defined under § 1.468B-1 of the Treasury Regulations promulgated under Sections 461(h) and 468B of the Internal Revenue Code of 1986, as amended.

18. Without further approval from the Court, and without the express written consent of Class Counsel and Counsel for the NFL Parties, the Settlement Agreement is not subject to any change, modification, amendment, or addition.

19. The terms of the Settlement Agreement and of this Final Order and Judgment are forever binding on the Parties, as well as on their respective heirs, executors, administrators, predecessors, successors, affiliates and assigns. The Opt Outs are excluded from the Settlement Class pursuant to request and are not bound by the terms of the Settlement

Agreement or this Final Order and Judgment. The Claims Administrator has posted a list of Opt Outs. *See* ECF No. 6533.

s/Anita B. Brody

ANITA B. BRODY, J.

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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*
Plaintiffs,

v.

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,
Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

ORDER¹

AND NOW, this _11th ___ day of _May_, 2015, it is **ORDERED** that the Amended Final Order and Judgment, dated May 8, 2015, is clarified as follows:

Paragraph 16 dismisses with prejudice all Related Lawsuits pending in the Court in which Releasers are the only named plaintiffs and Released Parties are the only named defendants. In all other Related Lawsuits pending in the Court, all Released Claims against the Released Parties are dismissed with prejudice.

All other terms of the Amended Final Order and Judgment remain unchanged.

¹ Unless otherwise noted, the terms used in this Order that are defined in the Settlement Agreement have the same meanings in this Order as in the Settlement Agreement.

s/Anita B. Brody

ANITA B. BRODY, J.

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